

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)**

AT MWANZA

CIVIL APPEAL NO. 3 OF 2013

COSMAS TIKI APPELLANT

VERSUS

AGRIPINA A. NYAMBURI RESPONDENT

JUDGMENT

13th July, & 7th September, 2021

ISMAIL, J.

This appeal has been taken at the instance of the appellant, a successive losing party, in both of the lower tribunals *i.e.* the Ward Tribunal and the District Land and Housing Tribunal (DLHT), in which the matter was handled. It all began in the Ward Tribunal of Kukirango at Kukirango, in which Application No. 17 of 2017 was instituted. The application was filed by the respondent, who is described as an administratrix of the estate of the late Almasi Nyabharambira, the alleged owner of the land in dispute.

The piece of land, measuring six acres was sold to the appellant by a Mr. Ngata Almasi for a sum of TZS. 160,000/-. The alleged sale was executed

on 24th May, 2004, and the seller alleged that the said suit land was given to him by his uncle, the late Almasi Nyabharambira. The Ward Tribunal was convinced that the sale was illegal. It went ahead and nullified it, and ordered that the purchaser, the appellant herein, be reimbursed the sum paid as the purchase price. This decision triggered an appeal to the DLHT, but the said appeal was dismissed and the decision of the Ward Tribunal was upheld.

The decision by the DLHT bemused the appellant, hence his decision to institute the instant appeal. The petition of appeal has three grounds, but, as it shall be apparent soon, I will not reproduce the said grounds of appeal.

When the matter came up for orders on 13th July, 2021, the parties were ordered to proceed with the matter by way of written submissions, whose filing was to conform to the schedule of filing, drawn by the Court. While the appellant filed the submission in conformity with the schedule, the respondent filed none and no explanation was availed for the failure. Going by the established position, such failure amounts to nothing but failure to defend the appeal (*Tanzania Harbours Authority v. Mohamed R. Mohamed* [2002] TLR 76; *Patson Matonya v. Registrar Industrial Court of Tanzania & Another*, CAT-Civil Application No. 90 of 2011; and *Geofrey Kimbe v. Peter Ngonyani*, CAT-Civil Appeal No. 41 of 2014; and

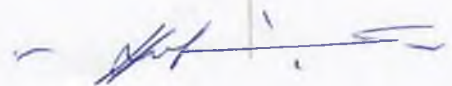
National Insurance Corporation of (T) Ltd & Another v. Shengena Ltd, CAT-Civil Application No. 20 of 2007 (all unreported).

The appellant's submission covered all grounds of appeal. Besides that, the submission revealed a pertinent fact which has a decisive effect to the appeal. This is with respect to a letter which was issued by the Court's then District (now Deputy) Registrar. The letter with Ref. No. C.D. 10/1 VOL/IV/40 and dated 4th of October, 2013, was addressed to the Chairperson of the Village Land Tribunal for Kiabakari village in Butiama, Musoma. This letter reads as follows:

"YAH: NDG. COSMA TIKI KUMLALAMIKIA NDG. NGATA ALMAS NA AGRIPINA A. NYAMBURI

Tafadhali rejea kichwa cha Habari hapo juu. Ndg. Cosmas Tiki amefika katika ofisi hii ambako pia alifungua shauri Misc. Land Application No. 3 of 2013 akilalamika kuwa ndg. Ngata alimuuzia eneo la kiwanja liliko (sic) katika Kijiji cha Kiabakari Kitongoji cha Kukirango mnamo tarehe 24/05/2004 na mauziano hayo kushuhudiwa na uongozi wa Kijiji na kitongoji.

*Lakini miaka minane (8) baadaye amejitokeza mtu aitwaye **Agripina A. Nyamburi** aliyedai kuwa ni msimamizi wa mirathi ya marehemu*



Almas Nyabaramilo aliyefariki 23/1/2001 na kufungua shauri la Ardhi No. 17/2011, katika baraza la Ardhi kata ya Kukirango.

*Maamuzi (sic) yaliyotolewa katika baraza hilo yaliyoonekana kuwa hayana **mantiki kisheria** kwa kutamka kuwa mdaiwa arudishiwe gharama zake za ununuzi bila kutaja atakayerudisha gharama hizo.*

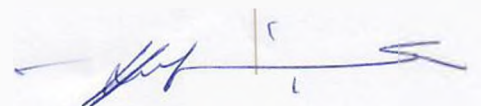
*Shauri hilo lilifanyiwa mapitio yaani **Revision** na baraza la Ardhi na Nyumba la Musoma, ambako pia Mwenyekiti wa baraza hilo alikosea kutamka kuwa Ndg. **Ngatia Almas** ambaye hakuwa miongoni mwa wadaawa amlipe Ndg. Cosmas Tiki.*

Kwa mantiki hiyo mienendo yote hiyo haikuwa sahihi, kwa kuzingatia mintirafu kuwa uongozi wa Kijiji chenu unalijua swala hili vizuri.

Mnaagizwa kusikiliza upya shauri hilo kwa makini inadaiwa marehemu mwenye mali alifariki mwaka 2001, na shamba hilo Cosmas Tiki aliuziwa mnamo 24/05/2004, miaka minane kabla marehemu hajafariki kwa nini marehemu hakudai kwa kipindi chote akiwa hai.

*Pia mnaagizwa kujirisha (sic) kama kuna mirathi iliyofunguliwa mahakamani iliyomteua Ndg. **Agripina A. Nyamburi** kuwa msimamizi wa mirathi ya Almas Nyabarambilo.*

Nawatakia kazi njema.



I. Arufani
Msajili wa Wilaya
Mahakama Kuu ya Tanzania
Mwanza

Nakala

Ndg. Cosmas Tiki
M/Kiti Kijiji cha Kiabakari

It is this communication that, rightly or wrongly, triggered the action that was taken by the Village Land Tribunal. While the question of propriety or otherwise of the decision of the Registrar to annul the concurrent decisions of the tribunals; or that of instructing the Village Land Tribunal is a subject for another day, what is clear is that, pursuant to that instruction, the Village Land Tribunal sat and reversed the Ward Tribunal's decision and handed ownership of the suit land to the appellant. This means, therefore, that the question of ownership of the suit land, which constitutes the contention in the pending appeal has been settled in the appellant's favour. It also implies that issues which would be canvassed in the instant appeal have been addressed in the decision in Application No. 8, whose decision was delivered on 6th April, 2014. This decision has not been challenged, vacated or reversed. It is not part of the instant appeal either, as to enable me lay my hands on it and make a finding there on. It is my considered view

that the instant appeal has been rendered irrelevant, if not overtaken by events. It is an appeal by a party that has regained ownership of the property that forms the subject matter of the appeal.

In consequence of all this, I find the appeal no longer untenable and I dismiss it. I make no order as to costs.

It is so ordered.

DATED at **MWANZA** this 7th day of September, 2021.




M.K. ISMAIL
JUDGE