

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

Misc. LAND CASE APPEAL No. 22 OF 2021

(Arising from the District Land and Housing Tribunal for Korogwe at Korogwe in Land Appeal

No. 14 of 2019 & Originating from Msasa Ward Tribunal in Land Case No. 6 of 2019)

ASIA JUMA NKONDO ----- APPELLANT

Versus

JAFARI JUMA NKONDO ----- RESPONDENT

JUDGMENT

07.10.2021 & 07.10.2021

F.H. Mtulya, J.:

An appeal was registered in **Land Case Appeal No. 22 of 2021** (the Appeal) of this court. Today morning the appeal was scheduled for mention. However, after a short consultation between the Appellant's learned counsel, Mr. Yona Lucas and Mr. Jafari Juma Nkondo (the Respondent) an agreement was entered to end this appeal in favour of proper records of the courts. The dual then informed this court that **Msasa Ward Tribunal** (the Ward Tribunal) in **Land Case No. 6 of 2018** (the Case) determined a land dispute in absence of proper parties.

When the parties where given the floor of this court to explain what is displayed in the record of the Appeal, Mr. Yona briefly

submitted that the Ward Tribunal determined a dispute between Asia Juma Nkondo (the Appellant) who preferred the Case against Jafari Juma Nkondo, her brother, instead of Mr. Nassoro Yahaya Nkondo, who is the administrator of the estates of the deceased, the late Mr. Juma Nassoro Nkondo, their father.

During visitation of the proceedings of the record of the Appeal, Mr. Yona also noted another defect on the judgment of the **District Land and Housing Tribunal for Korogwe at Korogwe** (the Tribunal) in **Land Appeal No. 14 of 2019** (the appeal) delivered on 28th November 2019 with regard to orders issued by the Tribunal. Mr. Yona then cited page 2 of the appeal in the Tribunal where the Tribunal held that the Respondent had no *locus standi* hence nullified the proceedings and decision of the Ward Tribunal. However, at page 3 of the judgment the Tribunal allowed the appeal for the Respondent and ordered costs be borne by each party.

To Mr. Yona's opinions, there is contradiction in the holding and orders of the Tribunal as the Tribunal after the nullification had no record at its hands to decide other matters. Finally, Mr. Yona prayed this court to rectify the situation by bringing down proceedings and decisions of the lower tribunals. The Respondent on his part claimed that he had already informed the Tribunal on the same.

This court after perusal of the record, it found out that the proceedings in the Tribunal conducted on 18th September 2019 shows that the Respondent stated that:

I was aggrieved with the decision of the lower tribunal.

They failed to consider that the Respondent is my biological sister and they failed to consider that we have an administrator of the deceased estates where he stated to distribute our land to our beneficiaries and allocated my land, where I lived...it is a plot where I lived, I developed the same.

This text in the proceedings, and noting the parties are relatives from the same family, and they have in place administrator of estates of their deceased father, and noting the dispute is based on the division of the deceased estates, it was possible for learned mind to appreciate the defects in the proceedings of the Ward Tribunal. The record shows further that at page 3 of the decision, the Tribunal nullified the proceedings of the Ward Tribunal, but decided in favour of the Respondent, which was interpreted by the Respondent as rightful owner of the disputed land. In situation like the present one, the only remedy is to set aside proceedings and quash the decisions of the lower tribunals in search of justice and want of proper record of this court.

The available practice of this court shows that in situation like the present one, the decision of the lower bodies in decision making cannot stand for want of *locus standi* of the parties. There is a large family of precedents on the subject (see: **Rhoda Athony v. Severian X-avery**, Misc. Land Case Appeal No. 49 of 2019, **Felix Constantine v. Jofrey Modest**, Misc. Land Appeal No. 9 of 2010, **Johansen Elias v. Paskarates Paschal**, Misc. Land Case Appeal No. 53 of 2019; **Ramadhani Mumwi Ng'imba v. Ramadhani Jumanne Sinda**, Misc. Land Case Appeal No. 8 of 2012; **Ally Ahmad Bauda v. Raza Hussein Ladha Damji & Two Others**, Civil Application No. 525/17/ of 2016; and **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203).

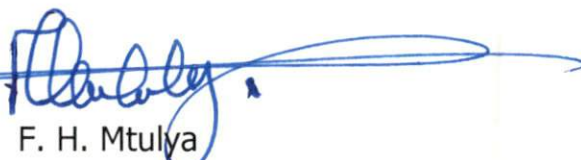
In the precedent of **Felix Constantine v. Jofrey Modest**(supra), this court stated that to be an heir of the estates of deceased person, creates an interest on part of the heir, but that does not give him an automatic *locus standi* to sue or being sued over the property of the deceased. It is unfortunate in the present appeal the parties are relatives from the same family of the deceased Mzee Juma Nassoro Nkondo and have noted the defect in their proceedings initiated at the Ward Tribunal.

This defect was noted and rectified in the Tribunal during the hearing of the appeal, but another wrong was recorded in the

judgment. Both defects were raised and explained by learned mind in Mr. Yona, and this court can not hesitate to set aside the proceedings and quash the decisions of both tribunals below, as I hereby do so. Any interested party in the dispute may wish to initiate a fresh and proper case in a competent body entrusted in determining and resolving land disputes, in accordance to laws regulating land disputes. I decline to order costs. The reasons are so obvious, that the parties are relatives from the same family and the dispute is yet to be resolved to the finality.


Order accordingly.




F. H. Mtulya
Judge
08.10.2021

This judgment is delivered in Chambers under the seal of this court in the presence of the Respondent, Mr. Jafari Juma Nkondo and in the presence of Mr. Yona Lucas, the Respondent's learned counsel.




F. H. Mtulya
Judge
08.10.2021