

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**LAND CASE APPEAL NO. 92 OF 2019**

(Arising from the Land Application No. 101 of 2017 at District land and Housing Tribunal for Singida at Singida)

**ELIPENDO M. KIMWERI ..... APPELLANT**

**VERSUS**

**IDDI RAMADHANI KIEMI ..... RESPONDENT**

**JUDGMENT**

*7/9/2021 & 24/9/2021*

**MASAJU, J**

The Appellant, Elipendo M. Kimweri, unsuccessfully sued the Respondent, Idd Ramadhani Kiemi, before the District Land and Housing Tribunal for Singida at Singida seeking declaration that she was the lawful owner of Plot No. 138 Block "FF" Unyankhae, within Singida Municipality and that the building built on it be demolished, hence this appeal in the Court.

The Appellant's Memorandum of Appeal is made up of three grounds of appeal, thus;-

*"1. That, the Trial Tribunal erred in law and fact to decide the matter be re-filed afresh while there is no need as*

*the Appellant was legally granted the suit land by recognized authority which appeared and proved the same that the Respondent is invader.*

- 2. That, the Trial Tribunal erred in law and fact to ignore the Appellant and her witnesses' evidence unreasonably which proved that she possess the land in dispute legally.*
- 3. That, the trial Tribunal erred in law and fact to decide in favour of the Respondent whom defaulted to file claim against Singida Municipal Council which took his land by special agreement".*

When the Appeal was heard before the Court on the 7<sup>th</sup> day of June, 2021 one Paul Lucas Kitiku acting under special power of attorney, appeared for the Appellant. The lay attorney adopted the three grounds of appeal to form submissions in support of the appeal in the Court. He prayed the Court to consider them and allow the appeal.

The learned counsel, Zahara Chima, for the Respondent contested the appeal, submitting that the trial tribunal so rightly dismissed the Application for want of necessary party, Singida Municipal Council, with leave to refile a fresh Application. On the need for joining necessary party allegedly for well informed decision on ownership of the Suitland, the Court's attention was drawn to **Claude Roman Shikonyi V. Estomy V. Baraka & 4 others** (CAT) Civil Revision No. 4 of 2012, Dar es salaam

Registry (Unreported), **Abdullatif Mohamed Hamis V. Mehboob Yusuf Osman & Fatina Mohamed** (CAT) Civil Revision No. 6 of 2017 Dar es salaam Registry (unreported) and **James Ibambasi V. Francis Staria Mosho** [1999] TLR 364. That, in the later case, the Court held that customary right tittle over the land did not terminate on account of mere survey of land in the absence of surrender of the said land by the customary title holder upon being compensated. That, the said **James Ibambas V. Francis Staria Mosha** (Supra) is *pari materia* to the instant case. That, the trial tribunal did not declare either party to be the lawful owner of the suitland. The Respondent ultimately prayed the Court to dismiss the appeal with costs for want of merit.

The Appellant, in rejoinder, argued that the Respondent should have sued the Municipal council which had allocated the suit land to her. That, Singida Municipal Council's two officers testified that the suitland belonged to the Appellant.

That is what at least the parties submitted for, and against the appeal before the Court.

The Respondent's Written Statement of Defence before the trial Tribunal *inter alia* had raised the preliminary objection of the Application on point of law thus;

*"i. That, Application is bad in law as it offenders  
Order 1 Rules 3 and 8 (1) of the Civil  
Procedure Code Cap 33 RE 2002."*

In the said preliminary point of law the Respondent had unsuccessfully taken issues with the Application allegedly for non-joining of Singida Municipal Council, which allocated the suitland to the Appellant, as a necessary party and be so joined under Order I Rules 3, 8(1) and 10(2) of the Civil Procedure Code [Cap 33 RE 2002]. In dismissing the preliminary point of law, the Ruling of the trial tribunal in party reads, in part, thus;

*"I agree with the Applicant that she cannot sue SMC. She has no cause of action against. SMC recognizes her to be the lawful owner of suitland.*

*.....the position could be different if Singida Municipal Council had denied recognizing her to be the lawful owner of suitland.....*

*I find that P.O. filed by the Respondent to have no merit. I hereby dismiss the same.... and order the application to proceed with hearing inter partes."*

Thereupon the framed the issues to guide the trial were thus;

*"(i) who among the Applicant and the Respondent is the lawful owner of suit Plot No. 138 Block "FF" Unyankhae within Singida Municipality?*

*(ii) To what reliefs if any, are the parties entitled".*

That said, from the record of proceedings of the trial tribunal there was no dispute that Singida Municipal Council (SMC) had entered into an agreement with the Respondent for surveying the Respondent's land upon which the Singida

Municipal Council was to take 60% of the surveyed plots and the Respondent 40% of the said plots thereof on the land which he had been owning under customary right land tenure. That, in addition, the Respondent had to be compensated by Singida Municipal Council for his land. That, upon the survey of the said land, ten (10) plots of land resulted there from, four (4) of them equivalent to 40% were given allocated to the Respondent. Six (6) plots equivalent to 60% thereof were taken by Singida Municipal Council for allocation. That, out of the six (6) plots taken by Singida Municipal Council one of them, namely plot No. 138 Block "FF" Unyankhae, within Singida Municipality was duly allocated to the Appellant by the said Municipal Council.

That being the case, the Appellant owed the Respondent nothing for she was not privy to the contract between the Respondent and Singida Municipal Council. The Respondent himself testified in the trial tribunal that he had sued the Singida Municipal Council for compensation of his land and that the Application No. 28 of 2018 before the District Land and Housing Tribunal for Singida was by then still pending. As a matter of fact and law, the Respondent's witnesses, Shaban Omary Kiranga (DW3), Mandewa Ward Chancellor, and Daniel Michael Mpuya (DW4), Land valuer with Singida Municipal Council, testified in the trial tribunal that it was the Singida Municipal Council which is responsible for compensating the Respondent, not the Appellant as so rightly testified by Paul Kitiku (PW1) and Exaud Eliud Chengula (PW2), Land officer with Singida Municipal

Council. This witness testified as well that the suitland belongs to the Appellant.

It is therefore obvious that the Respondent lacks cause of action against the Appellant for land compensation and as such he should not restrain the Appellant from vacant possession of the land which she had been dully allocated by Singida Municipal Council. The Court finds that the suitland was legally and dully allocated to the Appellant. She is therefore hereby declared the lawful owner of the suitland as it has been so rightly opined by the trial tribunal assessors.

The trial tribunal was wrong that upon overruling the preliminary point of law, on the purported necessary party, ultimately founded its otherwise not well informed decision on the very point of law she had previously dismissed.

The Instant matter is distinguishable from the legal authorities relied upon by the Respondent because the Respondent had also sued Singida Municipal Council, on her own, for land compensation of the impugned land. The Singida Municipal council, the land allocation authority, would be heard and defend herself accordingly. Secondly, the two Singida Municipal Council officials, Exaud Eliud Chengula (PW2) and Daniel Michael Mpuya (DW4) testified that the suitland had been dully allocated to the Appellant and therefore belonged to the Appellant and that it was the Singida Municipal Council which was legally duty bound to compensate the Respondent, not the Appellant. That being the case, the purported question

of non-joinder of necessary party, allegedly Singida Municipal Council, could not have risen given the fact that previously the said preliminary point of law had been fully considered and dismissed by the chairman of the trial tribunal himself.

The meritorious Appeal is therefore hereby allowed in its entirety. The trial tribunal's judgment and decree severally and together are hereby quashed and set aside accordingly. The Appellant is hereby accordingly declared the lawful owner of the suitland (Plot No. 138 Block "FF" Unyankhae Area, Singida Municipality). The cost of the appeal shall be borne by the Respondent.



  
GEORGE M. MASAJU

**JUDGE**

24/9/2021