IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPEAL No. 18 OF 2020

(Arising from the District Land and Housing Tribunal for Tanga at Tanga in Land Application No. 93 of 2016)

HASHIMU MOHAMED MNYALIMA
[Administrator of the estates of the late Mwantumu Shehe Mashi] ---------- **APPELLANT**

Versus

1. **MOHAMED NZAI**
2. **BAKARI ZUMO**
3. **MWANAHAMISI ZUMO**
4. **BAKARI NGASHO**
5. **MOHAMED ATHUMANI MBASHIRI**

---------- **RESPONDENTS**

RULING

26.11.2021 & 10.12.2021
F.H. Mtulya, J.:

On the 5th August 2021, this court delivered a precedent in an appeal decision arising from the **District Land and Housing Tribunal for Lushoto at Lushoto** (Lushoto Land Tribunal) in **Land Application No. 5 of 2020** (the case) on interpretation of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) with regard to the words: *the address of*

the suit premises or location of the land involved in the dispute. The precedent is cited as **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021. In the precedent, this court stated that:

> *...the record in this appeal shows that the Prescribed Form is silent on land sizes and demarcations, the proceedings displays variances on the demarcations marks surrounding the land and the judgment is awarding unclaimed size of land **suo moto** without evidence or involving the parties in the dispute. Decisions of this kind cannot remain in our courts' records.*

This statement was arrived after consultation of several laws regulating land matters and perusal of a bundle of precedents of this court and Court of Appeal on: first, the interpretation of Regulation 3(2) (b) of the Regulations and Rule 3 of Order VII in the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) on want of sufficient identification of a subject matter, real property land in terms of size, location and surrounding neighbours; and second, the directives of the Court of Appeal on un-pleaded facts (see: **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v.**

Masaka Ibeho & Four Others, Land Appeal No. 26 of 2015; **Madam Mary Silvanus Qorro v. Edith Donath Kweka & Another**, Civil Appeal No. 102; **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019; **Samwel Kimaro v. Hidaya Didas**, Civil Appeal No. 271 of 2018; **Barclays Bank (T) Ltd v. Jacob Muro**, Civil Appeal No. 357 of 2019).

From the practice of this court in favour of the stated position on the need of sufficient description of the land in plaint or prescribed forms, four (4) reasons of this court may be extracted, *viz*: first, the need of sufficient or precise description of land size, location and boundaries surrounding the land is for the court or land tribunals to distinguish lands in disputes with any other lands; second, courts cannot grant something which was never pleaded in plaint or prescribed forms; third, to ascertain and grease execution of decrees emanated from decisions in land cases; and finally, certainty and predictability of precedents of this court.

On the need to abide with laws enacted by either parliament or administrative bodies and interpreted by this court on the requirement of sufficient description of lands in disputes on plaint or prescribed forms, the decision of this court in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others** (supra) citing

the authority in **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others** (supra) stated that:

> *...the law did not make these obligatory provisions for cosmetics purposes. Its intention was to ensure that, the court determines the controversy between the two sides of a suit related to landed property effectively by dealing with specific and definite place of land. The law further intended that, when the court passes a decree, the same becomes certain and executable. I underscored the importance of the requirement mentioned above in various cases including the Daniel Dagala case (supra) and I repeat the same in this case at hand as a means of emphasis on the importance of the requirement.*

This court in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others** (supra) cited several decisions of this court on the subject of sufficient descriptions of disputed lands rather than general claim of lands in dispute, and since the matter was raised *suo motu* in this court during the proceedings when the suit was scheduled for hearing, this court delivered a struck out order for want of certainty of the land in dispute. However, in the precedent of **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**

(supra), this court, as it received the appeal from Lushoto Land Tribunal, allowed the appeal with costs, quashed the judgment and set aside proceedings emanated from the judgment for want of certainty of the land in dispute and consistency in decisions emanating from this court. The extract from the precedent reads that:

> *...for the sake of certainty, prediction and consistency in decisions emanated from this court, I will follow the course. I have therefore decided to allow the appeal with costs, as the Respondent protested the appeal...the record in this appeal shows that the Prescribed Form is silent on land sizes and demarcations, the proceedings displays variances on the demarcations marks surrounding the land and the judgment is awarding unclaimed size of land suo moto without evidence or involving the parties in the dispute. Decisions of this kind cannot remain in our courts' records. This is the court of record with additional powers of ensuring proper application of the laws by the courts below. It cannot justifiably close its eyes when it sees breach of the law in Regulation 3 (2) (b) of the Regulations or any other laws. I have therefore decided to quash the judgment and set*

aside proceedings of the Tribunal in the Application. Any interested party in the dispute may initiate fresh and proper suit in competent forum in accordance to laws regulating land matters.

This court being aware of the established practice of its own in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) and noting that in the present appeal the record is silent on land sizes and boundaries owned by each individual respondent or the appellant and further the record is silent on whether the land is occupied in common, the court on 26th of November this year, 2021 summoned the parties and their learned minds, Mr. Wenceslaus Mramba, senior counsel for the appellant and Mr. Mustafa Mlawa for the respondents to assist this court in interpreting the present appeal.

The learned counsels were summoned as part of cherishing the right to be heard recognized in the principles of natural justice, promoted in human rights and enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R. E. 2002] (the Constitution) and has already received precedent in **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44.

In exercising their right to be heard, however, the dual learned minds decided to take different courses in interpreting Regulation 3 (2) (b) of the Regulations and the precedent in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra). According to Mr. Mramba Regulation 3 (2) (b) of the Regulations has produced a Prescribed Land Form (Form No. 1) which initiates proceedings in the Tribunal and is attached in the Second Schedule to the Regulation which derive its mandate from the enactment of Regulation 3 (2) of the Regulations.

To bolster his argument, Mr. Mramba stated that paragraph 3 of Form No. 1 requires location and address of the suit premises land, and no further requirements. To his opinion, the interpretation of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) is *per incuriam* as the decision wrongly interpreted the provisions in Regulation 3 (2) (b) of the Regulations and Form No. 1. With regard to the present appeal and its status in this court, Mr. Mramba submitted that the appeal is competent as the appellant in the Tribunal was correct and did not breach any law by mentioning the location and suit premises land as: *Mwahako Barabarani Masiwani Ward in the City of Tanga*. In his opinion, the requirement of land sizes, location and surrounding neighbours is interpolations added by this court, which are

unknown to the law. Finally, Mr. Mramba submitted that the present case is of peculiar nature and may be distinguished from other land cases as the respondents were expanding boundaries of the disputed lands hence it was difficult for the appellant to mention specific sizes or neighbours surrounding the disputed land.

On his part Mr. Mlawa submitted that in the precedent **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra), the same arguments registered by Mr. Mramba in the present appeal were produced by learned counsel of the respondent. To his opinion, Mr. Mlawa, thinks that the precedent in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) correctly interpreted the provision in Regulation 3 (2) (b) of the Regulations and the reasoning in the case as merit for easy execution of the decisions emanating from land disputes.

According to Mr. Mlawa, before the precedent in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) was delivered, there were already precedents in place which required specific details of lands in disputes. In substantiating his submission, M. Mlawa cited the precedent of this court in **Romuald Andrea v. Mbeya City Council & 17 Others** (supra) and celebrated case of **National Agricultural and Food Corporation v. Mulbadaw**

Village Council & Others [1985] TLR 88, arguing that the claim in land must be substantiated in specific acreage.

Regarding remedies available in cases like the present appeal, Mr. Mlawa submitted that this court may quash the decision and set aside the proceedings emanated in the decision of the tribunal as this court has powers to do so when it sees violations of the law in the proceedings of the tribunal. Rejoining the submission of Mr. Mlawa, Mr. Mramba insisted his earlier point contending that the law and Form No. 1 inform applicants on how to initiate the proceedings and the same are silent on specific land sizes and demarcations. With regard to precedents in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) and **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** (supra), Mr. Mramba stated that the decision of **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** was decided by this court hence this court is not bound by its own previous decision which was decided *per incurim* or forgetfulness of the law. In replying the precedent of the Court of Appeal decided by full Court in **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** (supra), Mr. Mramba submitted that the precedent was decided before enactment of the

Regulations and in any case did not interpret Regulation 3 (2) (b) of the Regulation on land sizes.

On my part, I think, this court in the present appeal is asked to declare either party to be a rightful owner of the land. However, Form No. 1 is silent on the claimed size or demarcations of the land which this court is asked to pronounce. Similarly, proceedings are silent on the same from the testimonies of both sides. Land disputes of this kind are difficult to determine and declare one of the parties as a rightful owner of the land. Instead of resolving the matter, this court may turn into a catalyst to fuel further disputes during execution of the decree. That is why this court opted for the inquiry into the status of the present appeal in absence of specific size claimed by each individual person in the dispute. However, the inquiry invited different opinions with long registration of materials in law and precedents.

It is fortunate that this court is empowered to ask questions *suo moto* and consult parties where this court detects errors material to the merits of the case which invites injustice to the parties, and accordingly decides as it thinks fit under the law (see: section 42 & 43 of the Land Disputes Court Act [Cap. 216 R.E. 2019] (the Act).

My understanding tells me that any enactment of law without receipt of interpretation of the court is nothing. The words: *the address of the suit premises or location of the land involved in the dispute* in Regulation 3 (2) (b) of the Regulations have already received interpretation of this court in a bundle of precedents and all agree principally that land disputes registered in our tribunal or courts must identify specific size, location and demarcations (see: **Romuald Andrea v. Mbeya City Council & 17 Others** (supra); **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others** (supra) and **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra).

The thinking of this court is supported by four (4) reasons highlighted at page three (3) of this decisions and directives of our superior court in **Samwel Kimaro v. Hidaya Didas**, Civil Appeal No. 271 of 2018; **Barclays Bank (T) Ltd v. Jacob Muro**, Civil Appeal No. 357 of 2019 on the remedy of un-pleaded facts in cases. Today, Mr. Mramba prays this this court to depart from all cited four (4) reasons stated by this court and thinking of the Court of Appeal.

For this court to depart from its previous decisions on the same subject matter, there must be compelling reasons justified by

special circumstances including, but not limited to social and technological changes; change in philosophy of the courts; and may be when facts of the dispute are sufficiently different. The facts in the present appeal and materials in the precedent of **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) are sufficiently similar hence the present appeal may follow the course.

This court's decision will follow the course, not only because the facts are similar but also to respect decisions of other judges of this court. I also understand that abiding with previous decisions of similar facts has a lot of advantage than disadvantage, *viz*: certainty and consistency in applicability of law; predictability of decisions from this court; and ensures fairness to parties of similar faults in courts.

I am aware that Mr. Mramba distinguished the decision in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) and **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** (supra) in respect of size and version of the law in Regulation 3 (2) (b) of the Regulation. His main concern is that the decision of **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** (supra) was rendered down before enactment of the Regulation and did

not say anything relating to sizes of disputed land. Mr. Mramba may be correct.

However, the *ratio decidendi* found in the two precedents reflect the same thinking. The decision in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra), this court, at page 9, stated that:

> *...the record of appeal shows that the Prescribed Form is silent on land sizes and demarcations, the proceedings display variances on the demarcations marks surrounding the lands and the judgment is awarding unclaimed size of the land...without evidence or involving the parties in the dispute...decisions of this kind cannot remain in our courts' records.*

Similarly, the full court of the Court of Appeal in the decision of of **National Agricultural and Food Corporation v. Mulbadaw Village Council & Others** (supra) had put in place the requirement of specific acreage and evidence to justify the same, at its page 91 of the decision, even before enactment of Regulation 3 (2) (b) of the Regulations, in the following words:

> *...there is no evidence as to when each villager had occupied or was in possession of the land...in any case,*

*each villager had to prove his own case...**each claim is different from the other in terms of possession, of acreage, of the method of acquisition and so on**...they were individual claims...here each villager had a separate and distinct claim, though the claims were based on similar acts of trespass...*

(Emphasis supplied).

This thinking of the full court of the Court of Appeal manned by Hon. Chief Justice Nyalali (as he then was) and two other Justices of Appeal in Hon. Justice Mr. Mustafa (as he then was) and Mr. Makame (as he then was), cannot be faulted, unless the full bench of the Court of Appeal take its seat on similar matter.

This court is empowered and has consistently stated that that the Court of Appeal and this court are courts of record with additional mandate of ensuring proper application of the laws in lower courts and tribunals (see: section 42 & 43 of the Act and precedents in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) & **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). This court, being the court of record, cannot justifiably close its eyes when it

sees breach of the law in Regulation 3 (2) (b) of the Regulations or any other laws.

I have therefore decided to quash the judgment and set aside proceedings of the tribunal in the application. Any party in this dispute who wish to initiate fresh and proper suit, may do so in competent forum in accordance to laws regulating land matters. I award no costs in this appeal as the fault was caused by the tribunal and blessed by the parties, and in any case, the dispute was not resolved to its finality.

It is so ordered.

Right of appeal explained.

F.H. Mtulya

Judge

10.12.2021

This judgment is delivered in Chambers under the seal of this court in the presence of the Appellant, Mr. Hashimu Mohamed Mnyalima and his learned counsel, Mr. Wenceslaus Mramba and in the presence of four respondents, namely: Mr. Mohamed Nzai, Mr. Bakari Zumo, Mr. Bakari Ngasho & Mohamed Athuman Bushiri and their learned counsel Mr. Mustafa Mlawa.

F.H. Mtulya

Judge

10.12.2021