

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 102 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Application No. 108 of 2019)*

MENGI MACHELE MUMWI APPELLANT

[As Administrator of the Estates of
the Late Machele Mumwi Mugeta]

Versus

SIMION JAKOB RESPONDENT

JUDGMENT

13.06.2022 & 13.06.2022

Mtulya, J.:

On 27th September 2021, the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Application No. 108 of 2019** (the application) delivered a Ruling on point of law challenging the jurisdiction of the district tribunal. The point was drafted in the following words:

*That, this Land Application is **res judicata** as per section 9 of the **Civil Procedure Code** [Cap 33. R.E 2019].*

After full hearing of the point, the district tribunal at page 4 of the Ruling decided that:

Nakubaliana na pingamizi la awali. Shauri hili linatupiliwa mbali kwa kuwa lilishawahi kufanyika na kutolewa uamuzi (res judicata).

The reasoning of the tribunal is found at the same page that:

Ardhi yenye mgogoro ni ileile na wadaawa ni walewale kwa maana ya Mwombaji Mengi Machele Mumwi na jamaa zake dhidi ya Mjibu Maombi Simion Yakobo. Ni maslahi ya haki kwamba shauri hili linatakiwa kufikia ukomo.

The decision of the district tribunal is what is protested in this court. Ms. Mengi Machele Mumwi (the appellant) just after receipt of the copies of the Ruling and proceedings of the application, rushed to this court and preferred a single reason of appeal drafted in the following text:

The learned tribunal chairman erred in law and fact in holding that the land application No. 108 of 2019 before the tribunal is res judicata.

When the parties were called today to produce materials for and against the only ground of appeal, they invited legal services in Mr. Ostack Mligo assisted by Ms. Maula Tweve to represent Mr. Simion Jakob (the respondent) whereas Mr. Christopher Waikama appeared for the appellant. In setting the ball rolling, Mr. Mligo was the first to take the floor of this court and unreservedly conceded the appeal arguing that the perusal on the record of this appeal shows that the ground of appeal has merit. In justifying his

argument, Mr. Mligo submitted that neither the present appellant or nor his father, the late Mzee Machele Mumwi Mugeta (the deceased) had been in any land disputes with the respondent.

In Mr. Mligo's opinion, those who appeared and disputed the land were relatives of the appellant and sons of the deceased and had entered in the dispute in their personal capacity without any letters of administration of the deceased's estates. Mr. Mligo mentioned those persons who sued the respondent without *locus standi* as Mr. Nyangeta Mumwi, Said Machele Mumwi and Mengi Machele Mumwi.

Finally, Mr. Mligo submitted that the tribunal was wrong in deciding the matter as *res judicata* as the previous parties in the disputes were distinct with the present ones. This submission was well received by Mr. Waikama who supported the submission and appeal before this court. In the end both learned minds agreed that the dispute be remitted back to the district tribunal for hearing on merit, without any orders to costs.

I have scanned the record of present appeal. The record shows that in 2012, Mr. Nyangeta Machele Mumwi initiated **Land Dispute No. 6 of 2012** (2012 dispute) at Nyamrandirira Ward Tribunal (the ward tribunal) claiming one and half (1.5) acres from Mr. Simion Yakobo Makojo and the dispute was decided in favour

of Mr. Simion Yakobo Makojo. Sometimes in 2018, the same land was in contest again in **Land Dispute No. 32 of 2018** (2018 dispute) filed at the same ward tribunal by the appellant, Simon Yakobo against Saidi Machele Mumwi on Plot No. 26, who was complained to have trespassed on the land.

After receipt of the dispute, the ward tribunal decided that the suit was *res judicata* and cited its previous 2012 dispute. At page 2 of the decision, the tribunal stated that:

Kwa kuwa ardhi inayogombaniwa ni ileile na watu wale wale na Baraza ni lilelile, na kwa mujibu wa sheria hii kesi hii inakuwa RESI JUDIKATA kwa mantiki hiyo baraza linayo haki ya kuifuta, kwa kuiondoa kabisa.

The ward tribunal at the same page noted a very crucial point, but declined to determine and parties were at comfort. The observation of the ward tribunal was that:

...[shauri hili] linaondolewa kwa sababu mdaiwa anapaswa kukamilisha vigezo vya usimamaizi wa mirathi ya marehemu kama sheria inavyotaka.

The two decisions of the ward tribunal, 2012 & 2018 disputes, were not disputed anywhere and still remain intact to date in the record of the ward tribunal. However, the family clan of the

deceased sat and recommended the appellant to be an administrator of the deceased's estates and the recommendation was blessed in *Shauri la Mirathi Namba 2 la Mwaka 2019* at *Mahakama ya Mwanzo Mugango*. The instrument constituting the appointment, commonly known *Form Number Four* (FOMU YA USIMAMIZI WA MIRATHI), was pleaded and filed in a fresh **Land Application No. 108 of 2019** at the **District Land and Housing Tribunal for Mara at Musoma** to demonstrate that the appellant has followed the advice of the ward tribunal in 2018 dispute and currently has in possession of *locus standi* in the dispute.

Today during the hearing of the appeal both learned counsels of the parties agreed that the appeal was registered in this court with sufficient reason and may be remitted to the district tribunal to proceed with the hearing of the application on merit. However, I was stuck to learn that the two decisions of the ward tribunal in 2012 & 2018 disputes are still intact and may be executed at any point in time on the same land.

In exercise of its mandate enacted in section 43 (1) (b) & (2) of the Land Disputes Courts Act [Cap. 216 R.E. 2016] (the Act), this court *suo moto*, invited the dual leaned minds to address the court on appropriate remedies available in such circumstances, as directed by our superior court in the precedent of **Oysterbay Villas**

Limited v. Kinondoni Municipal Council & Another, Civil Appeal No. 110 of 219 and enactment in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002]. The dual had brief consultations and finally agreed that the proper course to follow is to challenge the previous decisions of the ward tribunals through appropriate channels before filing a fresh application in the district tribunal to dispute the same land.

On my part, I think, I have to agree with the learned minds. Section 3(2) (b) of the Act empowers ward tribunals to hear and determine land disputes and their decisions are legally binding between the parties in land disputes and can be enforced according to the laws regulating land disputes. Therefore pursuing the present dispute as a fresh application on the same piece of land will cause more chaos than cure during execution stage.

It is obvious that the legal apparatus in resolving the present dispute, will have three (3) decisions to execute on the same piece of land and that will be unfortunate for the parties and this court as custodian of law and justice (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021). This court is part of the

crafters of seats for unfortunate situations to take their course in our judicial system.

Having said so and noting there is apparent error material to the application causing injustice to the parties, I invite the provisions of section 43(1) (b) & (2) of the Act and hereby quash decision and set aside proceedings of the district tribunal in the application for want of proper application of the laws regulating land matters. I do so without any order to costs as the matter was raised by this court *suo moto* and learned minds appreciated it as officers of this court in furtherance of justice to the parties.



Ordered accordingly.

F. H. Mtulya

Judge

13.06.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Ms. Mengi Machele Mumwi and the respondent, Mr. Simion Jakob and in the presence of their learned counsels, Mr. Ostack Mligo and Mr. Christopher Waikama.

F. H. Mtulya

Judge

13.06.2022