

IN THE HIGH COURT OF TANZANIA
SHINYANGA DISTRICT REGISTRY
AT SHINYANGA

LAND APPEAL NO. 41 OF 2021

MADUHU CHARLES (Administrator of the Estate
of the late Charles Nhelya) **APPELLANT**

VERSUS

NHELYA CHARLES.....**1st RESPONDENT**

KAHABI NKENGELE.....**2nd RESPONDENT**

[Appeal from the decision of the District Land and Housing Tribunal of
Maswa at Maswa.]

(Hon. J.T. Kaare, Chairman.)

dated the 6th day of July, 2021
in
Land Application No. 1 of 2021

JUDGMENT

5th May & 6th July, 2022.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal of Maswa. The story behind this appeal in a nut shell is that, the Appellant instituted a Land application No. 1 of 2021 at the said tribunal claiming

that the 2nd Respondent had encroached into his land situated at Mtakuja in Nhobora in Itilima District.

The Appellant claimed that the disputed land belonged to the late Charles Nhelya who is his father. He added that, his father acquired and used the same since 1974 up to 20th June, 2011 when he died.

On his part the 2nd Respondent claimed that the disputed land is his, as he bought the same from Limbu Supi. To cement his assertion, the Appellant sent at the trial tribunal the witnesses for their selling contract.

To the conclusion, the trial tribunal declared the 2nd Respondent the owner of the disputed land, following buying the same from Limbu Supi.

That decision aggrieved the Appellant, hence appealed to this Court relying on 4 grounds of appeal. **One**, the trial court entertained the matter without jurisdiction; **two**, the trial tribunal erred in law for not joining in a case one, Limbu Supi, the seller of the disputed land to the 2nd Respondent; **three**, the trial tribunal erred to admit the sell agreement contrary to the law; **four**, the trial tribunal erred by pronouncing a judgment which does not state the right to appeal.

The appeal was heard on 9th May, 2022. All parties appeared in person, unrepresented.

Submitting in support of the appeal the Appellant stated that, the disputed land in question values at Tshs. 7,000,000/= whereas the trial tribunal has jurisdiction to try disputes whose value is less or equal to Tshs. 3,000,000/=. On that note, he was of views that, the tribunal had no pecuniary jurisdiction to entertain the matter.

Concerning the second ground of appeal, he was of views that, it was wrong for the trial tribunal not to join the alleged seller of the disputed land one Limbu Supi.

Lastly, he reiterated what actually is written in his grounds of appeal as how they appear.

In reply, the 2nd Respondent stated that, the District Land and Housing Tribunal had jurisdiction to try the matter. With regard to the second ground of appeal, the 2nd Respondent stated that, it was the duty of the Appellant to join Limbu Supi as necessary party. He said that that was not the duty of the trial Chairman. On the third ground, the 2nd Respondent stated that, the Chairman was right to admit the sale agreement as exhibit. On the last ground, the 2nd Respondent stated that, the trial tribunal told the parties on their right to appeal. He gave the reason that, that is why the Appellant managed to appeal and he did so in time.

The Appellant had nothing to rejoin. The 1st Respondent didn't turn up to court on the date that was scheduled for hearing, hence the matter proceeded *ex-parte* against him. That was the end of both parties' submissions.

I have earnestly gone through both parties' submissions and the available records. I have also taken into consideration the rival issues as well. I am going to determine the grounds of appeal one after the other by picking them randomly.

Concerning the 2nd ground of the appeal, the Appellant faulted the trial chairman for not joining to the case, one Limbu Supi, whom to him was a necessary party. The records show that, the evidence of the 2nd Respondent at the trial tribunal is to the effect that, he came into possession of the disputed land upon buying the same from Limbu Supi. But Limbu Supi was not a party to that original case.

On that account, the Appellant was of the opinion that, having learnt the evidence of the 2nd Respondent, the trial tribunal ought to have joined Limbu Supi as one of the Respondents. The logic behind would be for him (Limbu Supi) to establish his title on the disputed land before it passed to the 2nd Respondent herein.

In reply thereto, the 2nd respondent did not object that Limbu Supi was a necessary party to the case, but he claimed that, it was not the duty of the trial tribunal to join him, but the Appellant's.

I agree with the parties on the issue of Limbu Supi being a necessary party to the case. This is because, for the trial tribunal to adjudicate the case with certainty, Limbu Supi was of important to be joined in a case so as to establish his title before it passed to the 2nd Respondent. Actually, the 2nd Respondent's title solely depends on Limbu Supi's title. In other words, if Limbu Supi had no title on the disputed land, it follows therefore that, even the buyer would not have title over it. On that note, I agree with them that, Limbu Supi was a necessary party.

The issue is, who had a duty to join Limbu Supi in a case at the trial tribunal. With regard to it, Order 1 Rule 10 (2) of the Civil Procedure Act Cap 33 provides;

*"The court may; at any stage of the proceedings either **upon or without the application of either party** and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the **name of any person who ought to***

have been joined, whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added." (Emphasis supplied).

With this rule, it follows therefore that, even when the parties did not apply for Limbu Supi to be joined as a party to the case, the trial tribunal itself was required to join him. As it has been so held that it is for the tribunal to effectually and completely adjudicate upon and settle all questions involved in the case.

As Limbu Supi was not joined as a party during the trial, in my consideration this is a serious procedural in-exactitude which may, seemingly, cause injustice.

On that account, the trial tribunal's proceedings and decision arising from that un-procedural irregularity are hereby declared a nullity and quashed. The parties are ordered to return to their original position before the adjudication of the Land Application No. 1 of 2021 at the District Land and Housing Tribunal of Maswa. Any party, if he so wishes is at liberty to institute a fresh suit and join all necessary parties. If any of the party so

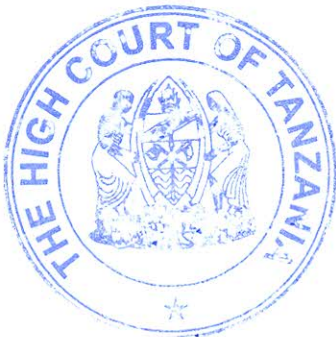
institutes the said case, it should be entertained by another Chairman with a new set of Assessors.

As this ground of appeal suffices to dispose of the appeal, I find no need to endeavor into discussing the rest, as it will just be an academic exercise. In upshot the appeal is allowed to that extent. Each party to bear his own costs.



S.M. KULITA
JUDGE
06/07/2022

DATED at SHINYANGA this 6th day of July, 2022.



S.M. KULITA
JUDGE
06/07/2022

