

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**Misc. LAND APPEAL CASE No. 24 OF 2022**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma  
in Land Appeal No. 8 of 2021 Originating from Nyamimange Ward  
Tribunal in Application No. 3 of 2020)*

**DAUDI MKAWAYA MWITA ..... APPELLANT**

***Versus***

**JULIANA MWITA ..... RESPONDENT**

**JUDGMENT**

**22.08.2022 & 22.08.2022**

**Mtulya, J.:**

The family of Mzee Jacob Marwa (the deceased) is in heavy contest over land located at Nyamimange area of Butiama District in Mara Region. The facts extracted from the record show that the land belonged to the deceased who had expired without leaving any Will. Similarly, the record is silent on materials of letters of administration of the deceased.

The contest started at family level, without any amicable resolution being reached hence it was lodged in **Nyamimange Ward Tribunal (Butiama)** (the ward tribunal) in **Land Case No. 3 of 2020** (the case). The contest in the ward tribunal was decided

in favour of Mr. Daudi Mkawayu Mwita (the appellant), which aggrieved Juliana Mwita (the respondent) hence approached the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 18 of 2020** (the appeal) for determination of the matter. The contest was on the course until reached this court in **Misc. Land Appeal Case No. 24 of 2022** (the Misc. Appeal). The two contesting parties are from the two offspring of the deceased, Mzee Mwita Jacob, the father of the appellant and Mzee Julius Jacob, the husband of the respondent.

Today, the two (2) contesting parties appeared in this court and after short consultations and discussions on the issue of letters of administration of the deceased, all conceded that there is no any instrument constituting representation of the parties in the case, and that the deceased had expired leaving the land in dispute without any Will. From the record it is vivid that the parties were without any *locus standi* from the ward tribunal through this court. During the pronouncement of the judgment at the district tribunal, the tribunal stated, at page 4 of the decision, that:

*...eneo la mgogoro ilikuwa ni mali ya Mzee Jacob  
Mwita [Jacob Marwa] ambaye ni babu wa mrufani  
wa mkwe wa mrufani.*

Following this text, the district tribunal declared the respondent as a legal owner of the disputed land ignoring the directive of our superior court in judicial hierarchy in the precedent of **Ramadhani Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173 of 2012 and decision of this court in **Ghati Chacha & Another v. George John Wambura**, Misc. Land Appeal Case No. 119 of 2021, which held that: *failure to plead and attach the instrument constituting the appointment is fatal irregularity which renders the proceedings incompetent for want of necessary standing.*

Having said so, and noting directives of this court and the Court in the cited precedents, which cannot be questioned, even if there are good reasons to do so, this court shall follow the same course. I have therefore decided to quash decisions of the lower tribunals and set aside incompetent proceeding which had produced bad decisions of the tribunals for want of the directives of the Court on the subject of letters of administration.

This court also has advisory mandate to the parties who are filing disputes in our courts. Before, I pen down, I would like to take this opportunity to advice the parties in the present contest to convene a clan meeting and take necessary measures to settle their differences, including appointment of the administrator of deceased's estates, who will be capable of suing or being sued in appropriate forums entrusted in deciding disputes. Owing to be circumstances of this appeal, which involve relatives from the same clan, this court cannot order costs in favour of greasing family settlement of the dispute. Each party shall bear his own costs.

Ordered accordingly.



F. H. Mtulya

**Judge**

22.8.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Daudi Mkawayu Mwita and in the presence of the respondent, Juliana Mwita.

F. H. Mtulya

**Judge**

22.08.2022