

**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. 29 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 167 of 2021 Originating from Bunda Stoo Ward
Tribunal (Bunda) in Land Dispute No. 9 of 2021)*

VICTOR NZAGI APPELLANT

Versus

JOSEPHINA MAGWALA RESPONDENT

JUDGMENT

17.08.2022 & 17.08.2022

Mtulya, J.:

The Court of Appeal of Tanzania (the Court) in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018, stated, in brief, at page 12 of the decision that:

It is the settled position of the law that, a matter not decided by the [subordinate court in judicial hierarchy] cannot be decided by [higher court in judicial hierarchy].

In giving reasoning of the same, the Court stated at page 13 & 14 of the judgment that:

It is clear that the jurisdiction of [higher courts in judicial hierarchy] on appeals is to consider and examine matters

*that have been considered and decided upon by the
[lower courts in judicial hierarchy].*

With the remedies available in such situations, the Court directed at page 14 of the judgment, that:

*In the premises, we are constructed to allow the appeal.
Consequently quash the Ruling as set aside the order of
the [court]. We order that the record be remitted to the
[court] before the same judge for composition of a fresh
decision on all matters submitted before him.*

This stand of the Court had already received support in a bundle of precedent of its own (see: **Alnoor Sharif Jamal v. Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006 and **Celestine Maagi v. Tanzania Elimu Supplies (TES) & Another**, Civil Revision No. 2 of 2014), and this court in a bunch of precedents (see: **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, Civil Appeal No. 40 of 2021; and **Hadija Athumani v. Viatory Ndege**, (PC) Matrimonial Appeal Case No. 21 of 2022).

In the present appeal, Mr. Victor Nzagi (the appellant) had registered three (3) reasons in the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 167 of 2021** (the appeal) to protest of the decision of **Bunda Stoo Ward**

Tribunal (Bunda) (the ward tribunal) in **Land Dispute No. 9 of 2021** (the dispute), namely: first, failure of the ward tribunal to mediate the parties as per law in section 17 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019]; second, absence of display of members on every day of the proceedings and proper Coram of the ward tribunal; and finally, failure to analyse evidences produced in the ward tribunal.

The district tribunal, noted the three (3) complaint in the petition of appeal at page 2 of its judgment, but declined to reply the second complaint on display of members on every day of the proceedings and proper Coram of the ward tribunal. During the hearing of this appeal, today morning, the parties were consulted on the subject as part of the right to be heard. Again, precedents in **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra) and **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, Civil Appeal Case No. 40 of 2021 was placed before them for perusal. After the perusal, Mr. Emmanuel Paul Mng'arwe, learned counsel for the appellant submitted that the district tribunal declined the determination of the second point of protest hence denied the appellant the right to be heard enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and prayed the record be remitted to the district tribunal for the determination of the second point. The respondent, who appeared without any legal representation, submitted that the wrong

was committed by the district tribunal and she brought the dispute in the legal machinery entrusted with the mandate to determine legal issues thinking that it would resolve the matter without faults.

From the record of the present appeal, it is obvious that the record is at fault for want of determination of the second point of protest registered in the district tribunal. The practice and guidance of our superior court has already been highlighted above in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra). This court being inferior to the Court, it shall follow the course without any reservations. The available remedy is to allow the appeal and remit the record to the lower tribunal which decided the matter to determine all issues raised before it.

Having said, so and considering the need of justice to the parties, and noting this court would love to determine issues which have already been resolved by lower courts or tribunals , I have decided to follow the course of the Court and hereby allow the appeal and quash the judgment of the district tribunal delivered on 2nd March 2022, set aside any order of the district court in the application and further direct the district tribunal, under the same learned chairman to compose a fresh and proper judgment that will comprise all registered reasons of appeal.

The consideration and determination of the issues must commence immediately and a fresh judgment be delivered within three (3) months from the date of this judgment. Noting the dispute has not been resolved to its finality and the issue in this appeal was raised by this court *suo moto*, I have decided to order no costs. Each party shall bear its costs.



Ordered accordingly.

A handwritten signature in blue ink, appearing to be "F.H. Mtulya", written over a horizontal line.

F.H. Mtulya

Judge

17.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant's learned counsel Mr. Emmanuel Paul Mng'arwe and in the presence of the respondent, Josephina Magwala.

A handwritten signature in blue ink, appearing to be "F.H. Mtulya", written over a horizontal line.

F.H. Mtulya

Judge

17.08.2022