

**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. 20 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 116 of 2021 Originating from Bunda Stoo Ward
Tribunal (Bunda) in Land Dispute No. 61 of 2021)*

HELENA MGINI KULIMBI APPELLANT

Versus

REVOCATUS KUBOJA RESPONDENT

JUDGMENT

17.08.2022 & 17.08.2022

Mtulya, J.:

Helana Mgini Kulimbi (the appellant) was dissatisfied with the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 116 of 2021** (the appeal) originating from **Bunda Stoo Ward Tribunal (Bunda)** (the ward tribunal) in **Land Dispute No. 61 of 2021** (the dispute) hence preferred the present appeal in **Misc. Land Appeal No. 20 of 2022** (the Misc. Appeal).

In the Misc. Appeal, the appellant complained on six (6) issues, including non-consideration of her sale agreement signed on 10th October 1999 which was tendered as an exhibit during the proceedings in the ward tribunal and absence of display of

value of the disputed land located at Bunda Stoo area of Bunda District of Mara Region. After registration of materials during the hearing of the Misc. Appeal, it was vivid that there is no either *ratio decidendi* or holding of the two (2) complained sale agreements signed on the same date and tendered by the parties in the ward tribunal. On its part, the district tribunal declined to determine the matters which were listed before it for determination in ground number six (6) in the respondent's complaint. Similarly, the value of the disputed land containing a house was not stated anywhere in the record, let alone land size and demarcations as per directives of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021.

During proceedings today afternoon, the parties were consulted on the two (2) issues and accordingly replied. According to the appellant, she cannot state with certainty the value of the land and that her sale agreement was not considered by the two lower tribunals, whereas the respondent contended that when he bought the land, the value was below Tanzanian Shillings Three Million (3,000,000/=Tshs.) and that his land sale agreement was drafted and witnessed by Bunda Stoo Village Executive Officer. The respondent complained

further that the appellant's sale agreement dated 10th October 1999 is not a genuine document as the commissioner for oath who witnessed the sale agreement was schooling in 1999. However, the record shows further that the sale agreement between the respondent and Sumai Ng'wala dated 10th October 1999 was not dully signed by the respondent. It is also unfortunate that both sale agreements of the parties were tendered in photocopies without any materials on record to display the reasons of the instance.

For interest of justice, and considering the provisions in section 42 and 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act), I hereby order the district tribunal to collect further evidence on the two raised matters by use of section 34 (1) (c) & (d) of the Act and resolve the issues in accordance to the laws regulating land disputes, before being determined by this court in an appeal.

It is the practice of this court and the Court of Appeal (the Court) that matters not decided by the lower courts or tribunals in judicial hierarchy cannot be decided by higher courts in the same judicial hierarchy. There is a bunch of precedents in support of the position (see: **Swabaha Mohamed Shoshi v.**

Saburia Mohamed Shoshi, Civil Appeal No. 98 of 2018; **Alnoor Sharif Jamal v. Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006; **Celestine Maagi v. Tanzania Elimu Supplies (TES) & Another**, Civil Revision No. 2 of 2014; **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; and **Victor Nzagi v. Josephine Magwala**, Misc. Land Appeal Case No. 29 of 2022).

The Court of Appeal in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi** (supra) 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, our superior court of the land in judicial hierarchy 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 situations, like the present one, 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 [lower court]. We order that the record be remitted to the [lower court] before the same [judge/ magistrate/ chairman] for composition of a fresh decision on all matters submitted before him.

In the present appeal, the two (2) matters which resolve the dispute were not well digested and resolved by both tribunals below, but the district tribunal is allowed by the law to invite further evidence from the ward tribunal to resolve the matters. For want of proper application of the laws, I have decided to remit the record of the present appeal to the district tribunal for further investigation on the dispute by calling further evidence and cherish the right to be heard to the parties as enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap 2 R.E. 2002].

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 11th March 2022, and further direct the district tribunal, under the same learned chairman to compose a fresh and proper judgment that will comprise additional materials on the contest.

The consideration and determination of the issues should 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, I have decided to order no costs. Each party shall bear its costs.



Ordered accordingly.

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, Helana Mgini Kulimbi and in the presence of the respondent, Mr. Revocatus Kuboja.

F.H. Mtulya

Judge

17.08.2022