

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

**LAND APPEAL NO 56 OF 2021
(Arising from Land Application No. 52 of 2019.)**

JITINYA LUHENDE.....A PPELLANT

VERSUS

NKANDI MWANDU..... ..RESPONDENT

RULING

MKWIZU, J:

At the Shinyanga DLHT, respondent filed Land application No. 52 of 2019 against the applicant seeking for an order directing the appellant to honour the agreement that was entered into between the respondent and respondent's father. The facts presented for the tribunal's determination were as follows; that the respondent, was legally owning un-surveyed land measuring 40 acres of land located at Ngeme Hamlet, Ikoma village, Itilima Ward within Kishapu District. He, on unspecified date sold 15 acres out of forty acres to Malale Luhende (deceased) respondents' father and that they reduced their agreement into writing. Unfortunately, Malale Luhende passed away before he could be handled the said land by the respondent. On his behalf, and in view of effecting his father's agreement, Jitinya Luhende as an administrator of the buyer, forcefully entered the Suitland in May 2019 and occupied the whole 40 acres contrary to the sale agreement claiming them to belong to his father, Malale Luhende.

Appellant denied the claims and the trial tribunal went to hearing the matter to determine its truthfulness.

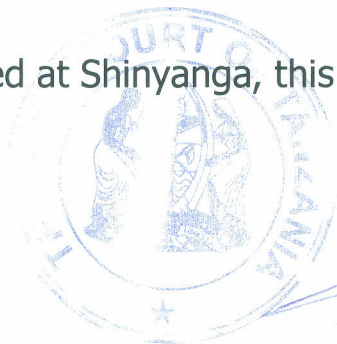
It seems, the appellant attended only the first day when Pw1 gave evidence and was absent on the rest of the days. At page 16 of the proceedings, appellants prayer for adjournment was rejected on ground that he was avoiding appearance and cross examination of witnesses and the tribunal proceeded to hear the applicant (now respondent) witnesses in the absence of the respondent (now appellant).

It is the legal position under Order IX of the CPC that where the defendant does not appear on the date of hearing, the trial Court may allow the plaintiff to proceed *ex-parte* and pronounce an *ex-parte* judgment. In these proceedings however, both the proceedings and the judgement are silent whether the matter was heard *ex-parte* or not.

Having found the respondent (now appellant) is avoiding the hearing, the proper procedure would have been to order for an expert hearing and the judgment issued thereafter would have been so titled to allow the appellant to take appropriate remedies after the said decision. The omission has led to confusion as parties could not know the appropriate remedies to take after such a decision.

The court is, on the foregoing reason, under section 43(1) (b) of the Land Disputes Court Act, (Cap 216 re 2019) inclined to revise the proceedings, judgment and decree issued by the trial tribunal and proceed to nullify the proceedings of the tribunal from 23/9/2020 and the resultant decision and decree. The file is remitted back to the trial tribunal to proceed with the trial from where it ended on 2/9/2020. Each party is to bear own costs.

Dated at Shinyanga, this 29th day of April 2022



A handwritten signature in blue ink, appearing to read "E.Y. Mkwizu", is written over the printed name and date.

E.Y. Mkwizu
Judge
29/4/2022