

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

LAND CASE APPEAL NO. 23 OF 2020

(Arising from Misc. Land Application no. 31 of 2019)

**MATHEO MISELYA.....1ST APPELLANT
HAMIS RAMADHANI.....2ND APPELLANT
MWANTUMU BUSHIRI3RD APPELLANT**

VERSUS

SHABANI MAGANGA.....RESPONDENT

JUDGMENT

Date of Last Order: 26/07/2022

Date of Delivery: 12/08/2022

AMOUR S. KHAMIS, J:

Matheo Miselya, Hamis Ramadhani and Mwantumu Bushiri were the respondents/judgement debtors in Misc. Land Application No. 31 of 2019 of the District Land and Housing Tribunal for Tabora.

On 29 September 2020, the presiding Chairman (Waziri M.H) granted an application for execution filed by Shabani Maganga, the respondent herein.

In the said ruling, the learned Chairman ordered Matheo Miselya, Hamis Ramadhani and Mwantumu Bushiri to vacate from the disputed land located at Kalunde Village, Kalunde Ward, Tabora District within fourteen (14) days.

Further, the learned chairman ruled that in the event of failure to vacate, the trio be evicted forcefully and bear costs of eviction.

Dissatisfied, Matheo Miselya, Hamis Ramadhani and Mwantumu Bushiri preferred the present appeal premised on three (3) grounds, namely:

1. That the District Land and Housing Tribunal erred for ordering the appellants to vacate from the disputed land while there is sufficient evidence to prove that they were lawful owners.
2. That the District Land and Housing Tribunal erred for entertaining an application for execution while the appellants had filed an application for stay of execution.
3. That the District Land and Housing Tribunal erred for not realizing that by entertaining application for execution in the existence of application for (stay of) execution, it amounted to an abuse of the Court process hence the appellants were prejudiced in the circumstances.

Before me, the appellants were represented by Mr. M.K Mtaki, Senior advocate of this Court.

Mr. Ally Maganga, learned advocate, acted for Shabani Maganga, the respondent.

The appeal was orally canvassed and both advocates made spirited submissions. I am indebted to them for the research and well organized arguments.

The relevant parts of submissions will be referred to in the course of addressing material issues in this appeal.

Upon perusal of the records in Miscellaneous Land Application No. 31 of 2019, I discerned that the learned chairman grounded his

In **JUMA MOHAMED V REPUBLIC, CRIMINAL APPEAL NO. 4 OF 2022** (Unreported), the Court of Appeal held that:-

*“The importance of conducting fair trial is well expounded by the Court in the case of **ALEX JOHN V REPUBLIC, CRIMINAL APPEAL NO. 129 OF 2006** (Unreported). The right and dignity of the respective parties in the proceedings have to be respected and each one treated fairly in all stages of the proceedings.....”*

In the present case, Hamisi Ramadhani and Mwantumu Bushiri were denied the right to address the tribunal because the presiding chairman considered their participation to the case as insignificant.

Instead, the chairman wrongly relied on presentation by Matheo Miselya who had no capacity to represent other parties to the case.

Having closely examined the records, I would agree with Mr. Mtaki that the learned chairman misdirected himself in law and facts by ordering execution to proceed.

In the course of submissions, Mr. Mtaki drew attention of this Court to a pending appeal that was allegedly filed by the applicant following extension of time granted by this Court in Misc. Land Application No. 8/2020.

He contended that in accordance to procedures, the Petition of Appeal was filed in the District Land and Housing Tribunal since 22/12/2020.

Mr. Mtaki further wondered as to why the Tribunal failed to transfer its file to the High Court in respect of Land Appeal No. 59/2017 for appeal purposes.

Having regard to the nature of submissions by Mr. Mtaki and the response by Mr. Ally Maganga, I found a need to inspect the impugned records.

Exercising the power of this Court under Section 43(1) (a) of the Land Disputes Court Act, Cap 216, R.E 2019, this Court called for inspection the tribunal's file in Land Appeal No. 59 of 2017.

Upon inspection, neither a petition of Appeal nor any other document initiating an appeal was located in the tribunal's file as contended by the appellant's counsel.

During hearing, Mr. Mtaki contended that Land Appeal No. 59/2017 originated from the decision of Kalunde Ward Tribunal in Land Dispute No. 1 of 2017 which related to a boundary issue.

He asserted that contrary to the nature of the dispute, the District Land and Housing Tribunal converted the case to ownership issue contrary to the dispute's records.

He submitted that in Land Dispute No. 1/2017, the Kalunde Ward Tribunal decided that both sides were to respect their land boundaries as kept by the previous leadership.

He therefore faulted the learned chairman for declaring the respondent as lawful owner of the disputed land.

Mr. Ally Maganga, learned advocate for the respondent, contended that the applicants did not take a proper route in challenging the tribunal's decision.

He argued that instead of filing an application for setting aside an *exparte* judgement, the applicants filed an application for stay of execution.

Upon perusal of the tribunal's records in Land Appeal No. 59 of 2017, I noticed a number of legal issues that needs to be revisited.

The impugned decision is a Judgement of the tribunal dated 6 December 2019 which was heard on merits as reflected in page 2 thereof, thus:-

"The parties were in person and thanks to their submissions pro or against the appeals".

At page 1 of the typed judgement, the appellate chairman acknowledged that the parties dispute related to boundaries. He said:

"This is the judgement following the appellant Shabani Maganga appeals against the decision of the trial Ward Tribunal for Kalunde in Land Dispute No. 1 of 2016 whereby it was decided that every person to have his boundary even though the appellant Shabani Maganga was seen to occupy the land for quite long time as from 1982 to date".

At page 2 of the typed judgement, the appellate chairman invoked a doctime of adverse possession and declared Shabani Maganga a lawful owner of the entire land including the one belonging to the appellants herein.

In arising at that conclusion, the appellate chairman did not, in any way, review the evidence on record and or specifically fault the trial ward tribunal's decision with reasons.

This in my view, was an apparent error, for the first appellate tribunal is charged with a duty of making fresh assessment of factual issues that cropped up during trial and or before the first appellate Court or tribunal.

I have also examined records in respect of the Land Dispute No. 1 of 2016 of the Kalunde Ward Tribunal.

The trial tribunal's decision reads that:-

“Baraza linatoa uamuzi kuwa kila mmoja aheshimu mipaka iliowekwa na uongozi uliopita pamoja na wazee maarufu na waanzilishi wa kijiji hiki. Uamuzi huu umetolewa ili iwe fundisho kwa watu au vikundi vinavyovamia maeneo na kusababisha migogoro”

With this clear record supported by the available evidence, it is obvious that the appellate chairman imported extrinsic issues in determining the parties dispute and failed to re – evaluate the evidence before him.

The evidence on records as given by Matheo Miselya, Hamisi Ramadhani, Mwantumu Bushiri who were the complainants, One Mr. Kisanfu and Shabani Maganga show that the parties dispute is purely boundary issue which was adequately tackled and addressed by the Ward Tribunal.

The tribunal's decision in Land Appeal No. 59 of 2017 is hereby quashed and the ward tribunal's decision in Land Dispute No. 1 of 2016 is restored.

The appellants are entitled to costs of this appeal. It is so ordered.



AMOUR S. KHAMIS

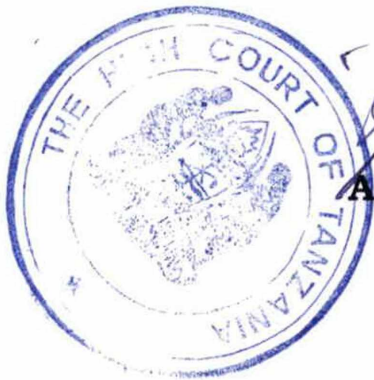
JUDGE

12/08/2022

ORDER

Judgement delivered in Chambers in presence of the respondent in person and Ms. Joyce Nkwabi, advocate for the appellants who are also present.

Right of Appeal explained.



A handwritten signature in blue ink, appearing to read "Amour S. Khamis", is written over the seal.

AMOUR S. KHAMIS
JUDGE
12/08/2022