

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

AT SHINYANGA

LAND APPEAL NO. 78 OF 2021

*(Arising from Land Application No. 08 of 2019 of the District Land and Housing Tribunal
for Maswa)*

**NGUSA MADUHU..... APPELLANT
(Administrator of the estate of the late Maduhu Kichimba)**

VERSUS

EMMANUEL MASHIKU..... 1ST RESPONDENT

TELA MASHIKU.....2ND RESPONDENT

JUDGMENT

07th June & 19th August 2022

MKWIZU, J.:

This appeal arises from the order by the District Land and Housing striking out the appellant's land application for failure to tender documentary proof establishing his capacity as a legal administrator of the estate of one Maduhu Kichimba which he was claiming. The appellant's appeal to this court was pegged on three grounds of appeal that: -

- 1. That, the chairman of Maswa District Land Tribunal erred in law and facts for determining the case in favour of the Respondents while they hopelessly failed to defend themselves before the tial tribunal*
- 2. That the Chairman of Maswa District Land Tribunal erred in law and in facts for ignoring intentionally the conclusive evidence of*

the appellant together with his witnesses and relying on garbled version of the evidence of the Respondents

3. That, the Chairman of Maswa District Land Tribunal erred in law and in fact for failure to record accurately the averment of the Appellant as he tendered before the court of law.

This decision will, however, confine itself to the only procedural issue raised during the hearing, that is the legality or otherwise of the trial tribunal's order. During the hearing, both parties were in person without legal representation.

Submitting on this point, the appellant said the order striking out the application was unjustified for the letters of administration were all attached in the application. The respondent did not submit on this point, probably because they are lay persons not knowledgeable in the law.

I have revisited the trial court's record. Though suing in his capacity as a legal representative of his father's estate, as indicated in his original application, the applicant (now appellant) did not append to that application the letters of administration or the decision that had appointed him so. It seems, on its own motion, under Regulation 16 of the G.N 174 of 2003, the tribunal chairman noted the anomaly. He then on 28/4/2020 ordered the applicant to rectify the omission by filing an amended application. In compliance thereto, the amended application was filed on 20/5/2020 with annexures including a copy of Form No VI, a copy of the judgment by Somanda Primary Court, and a copy of the clan meeting proposed the appellant administrator. It appeared in the evidence that the

appellant did not testify on his capacity. However, while answering the question by assessors he clarified that he was appointed the administrator of his father's estate by Somanda Primary Court. This evidence remained uncontroverted as the respondent did not challenge the same in their evidence.

Having recorded the evidence of the parties on the main dispute, the trial tribunal went ahead to discuss and strike out the matter for failure by the applicant (now appellant) to tender documents establishing his capacity as an administrator. The Chairman in his decision on page 3 of the trial judge stated that:

"it is no doubt the application filed this suit as an administrator of the deceased estate but no letter of administration has been tendered and admitted as evidence to establish his capacity therefore this tribunal cannot assume that he has locus stand without tendering the same..."

I doubt the adopted procedure. **Firstly**, the decision on this point was given without affording parties an opportunity to submit on whether the appellant had that capacity or not. The issue of locus stand came in the decision, raised suo-moto by the trial chairman who went further to decide upon it without affording parties an opportunity to be heard contrary to the rules of natural justice.

Secondly, the parties had no query on the appellant's capacity, I think because he had along with his pleadings furnished documentary evidence to substantiate the matter. As alluded to above, three documents were attached to the amended application on the instance of the tribunal, Form

No Vi, the decision by Somanda Primary Court appointing the appellant administrator, and the clan meeting minutes that proposed the appellant administrator of the deceased's estate, the Suitland inclusive.

I am of the strong view that, since the issue as to the locus of the appellant was known by the trial tribunal and was not at all contentious between the parties, the trial tribunal ought to have taken judicial notice of the decision of the court and its resultant order under section 59 of the Evidence Act, (Cap 6 RE 2019), that is Form No VI and proceed to determine the matter on merit in line with the oxygen principle brought by under section 3A of the CPC enjoining the courts and/or tribunal to facilitate a just, expeditious, proportionate, and affordable resolution of civil disputes without due regard to technicalities.

Consequently, I find the order striking out the matter unjustified. This court is invoking the revisional powers conferred upon it under section 43 of the Dispute Court Act, quash and set aside the DLHT decision, and remit the file back to the tribunal for it to compose a judgment on merit. Since the error was committed by the tribunal, I order the parties to bear their own costs. It is so ordered.

Date at Shinyanga this 19th day of **AUGUST** 2022




E.Y. MKWIZU
JUDGE
19/08/2022