

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DISTRICT REGISTRY**

**AT TABORA**

**LAND APPEAL NO. 3 OF 2022**

*(From the decision of the District Land and Housing Tribunal of Nzega  
District at Nzega in land Case No. 12 of 2021)*

**STELLA MAGANGA** (Administratrix of the Estate of the Late  
**MAGANGA MIDELO NKINGA)**.....**APPELLANT**

**VERSUS**

1. **MIDELO MAGANGA**  
2. **JUMA MIDELO**  
3. **HOKA MIDELO** }  
.....**RESPONDENT**

**JUDGMENT**

Date: 2.8.2022 & 2.9.2022

**BAHATI SALEMA, J.:**

The appellant herein, Stella Maganga, is aggrieved with the decision of the Nzega District Land and Housing Tribunal (the Tribunal) in Land Application No. 12 of 2021 (Hon. V.A Ling'wetu, Chairperson). At the

Tribunal the matter was dismissed, and the respondents were declared the legal owners of the suit land.

The appellant was dissatisfied with the decision of the Tribunal and has filed this appeal with three grounds, reproduced herein below as follows:

1. *That the trial chairman erred in law and facts by misdirecting himself to the doctrine of adverse possession.*
2. *That, the trial chairman erred in law and facts by holding that the land in dispute belongs to 1<sup>st</sup> respondent while the proceedings are tainted with illegalities.*
3. *That, the trial chairman erred in law and facts by relying on respondents' evidence, while failing to called(sic) Elias Mapolu (purported seller) "bibi" nor even mention her name or tendered any supporting documents to prove the same.*

The appellant prayed for the appeal to be allowed with costs.

With the order of the court, the appeal was heard ex-parte. In arguing the appeal on behalf of the appellant, Mr. Fadhili Kingu abandoned ground number one and proceeded with the second and third grounds of appeal.

Submitting on the second ground of appeal, he stated that the whole procedure was tainted with illegalities. According to the records, after the application had been filed at the District Land and Housing Tribunal and served to the respondents, who jointly filed the preliminary objection and both of them signed.

On 12/10/2021 the District Land and Housing Tribunal ordered that the matter be heard on page 9 of proceedings. The District Land and Housing Tribunal ordered the matter to be heard on 26/10/2021.

He further argued that, on 26/10/2021, the matter was set for hearing on 28/10/2021 and the District Land and Housing Tribunal framed issues and the *Coram: Wajibu maombi "yupo"*. He further submitted that it was not clear whether the 1st, 2nd, and 3rd cross-examined after the SM1, Stella Maganga tendered the exhibit.

The 1<sup>st</sup> respondent, Midelo Maganga was there during the tendering of exhibit P1 but the 2nd and 3rd respondents were not seen on the record. He submitted that the second and the third respondents who were not present were denied the right to be heard and were not given the right to cross-examine before exhibit "P1" which was tendered and admitted. Then the applicant closed the case.

He further contended that on 2/11/2021 in the defence case, it was the only 1<sup>st</sup> respondent who defended his case, and later on, he brought his witness who testified. He submitted that there is nowhere the 2<sup>nd</sup> and 3<sup>rd</sup> respondents revealed if they defended their case. Therefore, the respondent closed his case.

He stated that it is a principle of natural justice that a person should not be condemned unheard. To substantiate his position he referred to the case of **Mbeya- Rukwa Auto Parts and Transport LTD. vs. Justine Mwakyoma**, TLR [2003] 251.

He further submitted that in the record, the proceedings are silent on the first respondent and whether the trial tribunal entered an (*ex-parte*) order against the second and the third respondents or they were issued summons after adjournment on 12<sup>th</sup> October 2021. To substantiate his stance, in the Land Disputes Court (The District Land and Housing Tribunal) Regulations, GN. 174/2003.Regulation 11 (1) (c) provides that;

*"Where the respondent is absent and was duly served with notice of hearing or was present when the hearing date was fixed and has not furnished the Tribunal with good cause for his absence, proceed to hear and determine the matter ex-parte by oral evidence."*

He also stated that on 23/11/2021 the trial tribunal fixed date for judgment the first respondent was present but the second and third respondents were absent, and no summons were issued to them. To buttress his stance he referred to the case of **Cosmas Construction Co LTD Arrow Garments Limited**, [1992] LRT and Order XX, Rule 1 of the Civil Procedure Code, Cap.33.

As to the 3<sup>rd</sup> ground of appeal, the Chairman erred by relying on evidence of the 1<sup>st</sup> respondent, that he bought the disputed land in 1986 that land previously sold by her grandmother. The land in dispute was returned by DW1, Migelo Maganga. However, he contended that in the Written Statement of Defence of the respondents at 6:1, 6:3, 6:4 Parties are bound by their pleadings. In **Makori Masaga Vs. Joshua Mwaikambo and another**, T LR Page 88. He beckoned for this appeal to be allowed.

Having gone through the raised grounds of appeal, the records of the court and the submissions from the appellant, the main issue for determination is whether this appeal has merit.

As to the issue of illegalities, upon scrutiny of the court record; I have observed that the proceedings are silent on the first respondent and that no *ex-parte order* against the second and third respondents was

entered or was issued summons after adjournment on 12<sup>th</sup> October 2021.

It is a requirement of law under the Land Disputes Court (The District Land and Housing Tribunal) Regulations, GN. 174/2003.

Regulation 11 (1) (c);

*"Where the respondent is absent and was duly served with notice of hearing or was present when the hearing date was fixed and has not furnished the Tribunal with good cause for his absence, proceed to hear and determine the matter ex-parte by oral evidence."*

Also, as noted in the proceedings of the court that on 23/11/2021 the Chairman fixed the date for judgment. The 1<sup>st</sup> respondent was present, but the second and third respondents were absent, and no summons was issued to them.

Prudence shows, that the chairman ought to have notified by giving summons or else order for *ex parte* and conduct its business for whatever reasons. The absence of an order or issue of summons to the party in such circumstances prejudiced the respondents by depriving them of their fundamental right to be heard. On the effect of condemning a person unheard, the Court of Appeal of Tanzania held in

**Hussein Raphael & 2 others vs. Republic**, Criminal Appeal No: 280/2008 (Arusha, Unreported) that;

*"In the interest of justice and in order to uphold the 2nd appellant's fundamental right to a fair trial, under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania/1977, the right to be heard being paramount, we hereby set aside the proceedings and judgment of the high court."*

This court, therefore, having reflected on the irregularities highlighted above, the reasons stated and the authorities cited, is of the view that it was unsafe for the trial tribunal to decide without abiding by the required rules. It is my considered view that the omission is a fundamental procedural irregularity that denied the respondents' right to a fair hearing, which could have assisted this court to attain justice. In the instant case, the omission occasioned injustice to the appellant. I find this also has merit.

As stated earlier, this ground alone suffices to dispose of the appeal.

Consequently, in view of the incurable irregularities exposed above by the counsel of the appellant, I hereby exercise my revision power to revise and quash the Tribunal Proceedings in the Land Application and set aside the decree for being a nullity. Ultimately, for the interest of

justice, I order that this matter be heard afresh by the Tribunal before another Chairman and a new set of assessors .

Order accordingly.



*A. Bahati*

**A. BAHATI SALEMA**

**JUDGE**

**2/09/2022**



Date: 02/09/2022

Coram: Hon. G.P. Ngaeje, Ag DR

Appellant: Advocate Fadhili Kingu.

Respondent: Absent.

B/C Omari Mkongo, RMA

**Mr. Fadhili:** The matter is coming for judgment. We served the respondent with the summons and then lodged the service's affidavit.

**Court:** Judgment delivered this 02/09/2022 in presence of the appellant's counsel Fadhili Kingu and in absence of the respondent in the open court, via virtual court.



**G.P. NGAEJE**

**Ag. DEPUTY REGISTRAR**

**02/09/2022**

**Court:** Right of appeal fully explained.



**G.P. NGAEJE**

**Ag. DEPUTY REGISTRAR**

**02/09/2022**

