

**THE UNITED REPUBLIC OF TANZANIA**

**(THE JUDICIARY)**

**LAND DIVISION OF THE HIGH COURT**

**DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND REVISION No. 9 OF 2021**

*(Arising from the District Land and Housing Tribunal of Musoma at Musoma in:  
Land Application No. 949 of 2021; Misc. Application No. 925 of 2021; Misc.  
Application No. 68 of 2020; Misc. Application No. 206 of 2018; Application No.  
198 of 2017; and Application No. 198 of 2016)*

**1. PASCHAL MAELELE**  
**2. SONGORA NYAKIRINDI** } ..... **APPLICANTS**

***Versus***

**NYANG'UBHA SIBORA** ..... **RESPONDENT**

**RULING**

31.10.2022 & 31.10.2022

**Mtulya, J.:**

This revision was scheduled today for hearing. However, before hearing proceedings could take its course, this court after perusal of the record, *suo moto*, noted four (4) faults at the display in the proceedings and decisions of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) originated in Land Application No. 198 of 2016 (the application) between the parties, namely: first, lack of land size and determinations in the application which initiated all other proceedings between the parties; second, change of the respondent's status from administratrix of the estates of **Sibora Kigera** (the deceased) to

an individual person, **Nyang'ubha Sibora** (the respondent); third, change of application number from 198 of 2016 to 198 of 2017; and finally, lack of signature of learned tribunal's chairman at the end of every witnesses testimony.

The faults were vivid from the record as the respondent filed the case as application No. 198 of 2016 on 14<sup>th</sup> September 2016 as an administratrix of the estates of the deceased against **Paschal Maelele** (the first appellant), **Songora Nyakirindi** (the second appellant) and **Nyamwai Silima** (Mr. Silima). During the proceedings, the tribunal changed the application number and respondent's status from an administratrix of the estates to individual person and printed the application as No. 198 of 2017. No reasons were displayed on the record.

The respondent on her part when lodging the application, at paragraph 3 of the **Land Application Form** (the form) described the land location and size as: **Musoma Municipality at Buhare Ward**. As the proceedings was taking its course, the learned Chairman declined to append signature at every end of witnesses' testimonies.

Following the cited faults, this court decided to consult learned counsels of the parties as part of cherishing the right to be heard as enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania [Cap. 2 R.E.**

**2002]** (the Constitution). According to Mr. Emmanuel Gervas, learned counsel for the appellants, the faults go to the root of the matter and that is why execution of the matter became fracas and impossible. With the available remedies, Mr. Gervas submitted that proceedings and decisions which do not abide with the law must be quashed in favour of proper record of the court.

The move suggested by Mr. Gervas was supported by Mr. Baraka Makowe, learned counsel for the respondent, who contended that there is no record of Application No. 198 of 2016 before the tribunal and this court hence any proceedings from when the suit changed its name to date is a nullity including **Application for Execution No. 949 of 2021** before the tribunal. With the available remedies, Mr. Makowe recommended that all proceedings emanated in Application No. 198 of 2016 are to be quashed and the parties be at liberty, if so wish to file fresh and proper cause of auction in competent body entrusted with mandate to determine land disputes as per current land laws.

I have perused the record of this application and found the source of all complaints is the initial dispute filed in **Application No. 198 of 2016**, which was filed without certainty in land which had caused fracas during execution stage granted in **Misc. Applications No. 68 of 2020 & 949 of 2021**. However, both the

application and proceedings are silent on land size and demarcations, despite existence of the order in **Misc. Application No. 949**. This is discouraged by the provision of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 (the Regulations) and precedents in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021. Similarly, the record shows that the tribunal changed both the number of the application and status of the respondent without any registered reasons in the proceedings. The learned Chairman also declined to append signature at the end of every witness testimony as per requirement of the law in the precedent of the Court of Appeal in **Joseph Elisha v. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 and this court in **Ako Group Ltd v. Charles Joseph Lameck**, Labour Revision No. 6 of 2022.

Having noted the series of errors material to the merit of the application causing injustice to the parties, and being aware this court has additional powers under section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Act) in ensuring proper application of laws, I cannot close my eyes in seeing vivid breach of the laws and practice of the superior courts in judicial hierarchy (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

In the end, I have decided to set aside proceedings of the purported application No. 198 of 2017 and application No. 198 of 2016 for want of proper record of the court. Any party who is further interested in the dispute, may wish to initiate fresh and proper cause of action in accordance to the current land laws and procedures regulating land disputes. I do so without any order to costs. Each party shall bear its own costs. The reason of deciding so is obvious: the faults were discovered by this court; the dispute was not resolved to its finality to identifying the right party; and the learned counsels, Mr. Makowe and Gervas assisted this court in cherishing section 3(A) & (B) of the **Civil Procedure Code** [Cap. 33 R.E. 2022].



Ordered accordingly.

  
F. H. Mtulya

**Judge**

31.10.2022

This ruling was delivered in chambers under the seal of this court in the presence of the parties, Paschal Maelele, Songora Nyakirindi and Nyang'ubha Sibora and their learned counsels, Mr. Gervas and Makowe.

  
F. H. Mtulya

**Judge**

31.10.2022