

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA

LAND APPEAL CASE No. 123 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in
Land Application No. 1 of 2018)*

FINCA TANZANIA LIMITED }
(TARIME BRANCH) } **APPELLANT**

Versus

1. OMARY MANYAMA MKUGE }
2. JOHN MAGIGE MAISORI } **RESPONDENTS**

JUDGMENT

01.11.2022 & 01.11.2022
Mtulya, J.:

Mr. Stephen Charles Kaswahili, learned counsel for **FINCA Tanzania Limited-Tarime Branch** (the appellant) approached this court and preferred **Land Appeal Case No. 123 of 2021** (the appeal) complaining that the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) in **Land Application No. 1 of 2018** (the application) had left one (1) issue unattended when resolving the application.

According to Mr. Kaswahili the tribunal had drafted a total of five (5) issues in the application, as reflected at page 19 of the proceedings of the tribunal and page 3 of the judgment of the application, but declined to determine one issue in number four

(4) which demands a reply on: *whether the second respondent had good title to pass to the applicant*. In the opinion of Mr. Kaswahili, the unattended issue goes to the root of the matter and determines whether the first respondent had acquired good title to the land. With the available remedies, Mr. Kaswahili submitted that failure to resolve any of the agreed issues in trial tribunals vitiates judgments and decrees in applications.

In order to bolster his argument, Mr. Kaswahili cited the authority of the Court of Appeal (the Court) in **Mohamed Masoud Abdallah & 42 Others v. Tanzania Road Haulage (1980) Ltd**, Consolidated Civil Appeal No. 150 & 158 of 2019 where it was stated, at page 15 of the typed judgment, that the first ground of appeal has merit because there was a failure by the trial court to determine the second issue. Finally, Mr. Kaswahili submitted that the Court observed the omission vitiated the impugned decision hence quashed the decision and remitted the case to this court to determine the unattended issue as it was impossible for the Court to step into the shoes of this court.

Following the citation of the above Court's decision, Mr. Kaswahili registered two (2) prayers in this court, namely; this court to nullify both the judgment and decree of the application in the tribunal; and second, to remit the application to the

tribunal to resolve the forth issue as reflected at page 19 of the proceedings by composing a fresh and proper judgment. This move was cherished by Mr. Onyango Otieno, learned counsel for the first respondent whereas the second respondent declined appearance despite alternative service in **Mwananchi New Paper of Thursday, 2nd June 2022**. According to Mr. Otieno, the cited irregularity is fatal and incurable in this court hence remitting the case to the tribunal would be an appropriate course.

This court is a court of law and justice and follows the directives of the Court through various precedents. Today, the authority in **Mohamed Masoud Abdallah & 42 Others v. Tanzania Road Haulage (1980) Ltd** (supra) was cited with approved of the precedents in **Truck Freight (T) Ltd v. CRDB Ltd**, Civil Application No. 157 of 2007 and **Mantrac Tanzania Limited v. Joaquim Bonaventure**, Civil Appeal No. 145 of 2018. The Court has also cherished the thinking in a bundle of other precedents (see: **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018; **Alnoor Sharif Jamal v. Bahadur Ebrahim Shamji**, Civil Appeal No. 25 of 2006 and **Celestine Maagi v. Tanzania Elimu Supplies (TES) & Another**, Civil Revision No. 2 of 2014).

This court has been following the move and supports the thinking of the Court without any reservations. There is a bunch of precedents on the subject in this court displaying the practice (see: **Victor Nzagi v. Josephina Magwala**, Misc. Land Appeal Case No. 29 of 2022; **Helena Mgini Kulimbi v. Revocatus Kuboja**, Misc. Land Appeal Case No. 20 of 2022; **Agripa Fares Nyakutonya v. Baraka Phares Nyakutonya**, Civil Appeal No. 40 of 2021; **Hadija Athumani v. Viatory Ndege**, (PC) Matrimonial Appeal Case No. 21 of 2022; and **Nyamatemo Frugence v. Hekwe Kitang'ita**, Misc. Land Appeal Case No. 117 of 2021).

I have perused the record of this appeal and found that on 17th June 2020 the tribunal was convened and the parties in the application with consultation of the tribunal drafted a total of five (5) issues as reflected at page 19 of the typed proceedings of the tribunal. The same issues are displayed at page 3 of the judgment pronounced on 26th November 2021, but the learned tribunal's Chairman declined to resolve the crucial forth issue which goes to the root of the matter on *whether the second respondent had good tittle to pass to the applicant*. It is unfortunate that no express reason of the decline was registered on the record by the tribunal.

Having noted the fault goes to the root of the matter causing injustice to the parties, and recognizing there is already directives of the Court on the subject, I am moved to invite section 43(1) (b) of the **Land Disputes Courts Act** [Cap 216 R.E 2019] (the Act) to quash both the judgment and decree of the tribunal. I further remit the record to tribunal to compose fresh judgment that will comprise replies to all raised issues in the proceedings. I do so without any order as to the costs as the fault was caused by the tribunal, not the parties. The tribunal be moved, determine and deliver decision of the application within sixty (60) days from the date of this judgment, without any further delay.



Ordered accordingly.


F. H. Mtulya

Judge

01.11.2022

This judgment was pronounced in chambers under the seal of this court in the presence of Mr. Stephen Charles Kaswahili, learned counsel for the appellant and Mr. Onyango Otieno, learned counsel for the first respondent.


F. H. Mtulya

Judge

01.11.2022