

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

**Misc. LAND APPEAL CASE No. 38 OF 2022**

*(Arising from the District Land and Housing Tribunal for Mara  
at Musoma in Land Appeal Case No. 130 of 2021; originating  
from Buruma Ward Tribunal in Land Case No. 19 of 2021)*

**WAZIRI HUSSEIN ISORE ..... APPELLANT**

***Versus***

**1. SOKOINE MSETI**  
**2. MARWA CHOGWO**  
**3. MKAMI SESE** } ..... **RESPONDENTS**

**JUDGMENT**

24.11.2022 & 24.11.2022

**Mtulya, J.:**

**Mr. Waziri Hussein Isore** (the appellant) had approached the **Buruma Ward Tribunal** (the ward tribunal) and filed **Land Case No. 19 of 2021** (the case) against **Mr. Sokoine Mseti** (the first respondent), **Mr. Marwa Chogwo** (the second respondent) and **Mrs. Mkami Sese** (the third respondent) for a piece of land located at **Kwikingi Hamlet within Rwamgabo Ward of Butiama District in Mara Region**. The case was filed on 30<sup>th</sup> September 2020 and was scheduled for hearing on 7<sup>th</sup> October 2020. The opening words of the appellant during the hearing of the case in support of the contest, show that:

*Siku ninasajili dai hili tarehe 30.09.2020, nilikuwa bado sijateuliwa na ukoo kuhusu shamba hili. Kikao cha ukoo kilikaa tarehe 03.10.2020 kunitewa kuwa mwakilishi katika Baraza hili...marehemu Babu yangu **Isore Maregeri**, alikuwa na wanawake sita (6)... akahamisha wanawake watatu kuja kukaa katika eneo hilo....Baadhi ya vijana walibaki wakiendeleza shamba la baba yao. Ni shamba hilo lenye mgogoro.*

On the other hand on 16<sup>th</sup> November 2020, when the case hearing was scheduled again for hearing proceedings, the first respondent testified that the land in dispute belongs to his father called **Mr. Mseti Sokoine** who was occupying and using the land since 1988, whereas the second and third respondents testified that the land in dispute belongs to their father since 1947. After full hearing of the case, the ward tribunal decided in favor of the respondents and reasoned, at the final but one page, that:

*Wajumbe wanawapa ushindi wadaiwa kwa sababu mlalamikaji alieleza Baraza uongo kuwa babu yake alikaa pale Mwaka 1905 ikaja kuonekana ni uongo, hata Babu yake hajawahi kuishi pale. Pili, hakuleta barua ya kuteuliwa kutoka mahakamani ya*

*usimamizi wa kesi hii. Badala yake alileta barua ya watu wa mtaani waliomteua bila hata mhuri.*

This reasoning of the ward tribunal aggrieved the appellant hence filed **Land Appeal Case No. 130 of 2021** at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) complaining that the ward tribunal decided the matter without abiding with the laws enacted in the **Land Disputes Court Act [Cap. 216 R.E 2019]** (the Act) and the **Ward Tribunals Act [Cap. 208 R.E 2002]** (ward tribunal law). After registration of all relevant materials, the district tribunal noted a point of law, on *locus standi* on part of the appellant, which needed clarifications from the parties hence invited the parties to explain on the subject as part of cherishing the right to be heard. After submissions of the materials on the subject, the district tribunal at page 4 of the judgment decided to uphold the decision of the ward tribunal and reasoned at page 3 of the judgment that:

*Mrufani Waziri Hussein Isore alifungua Shauri dhidi ya Warufani bila kufuata taratibu za kisheria za kuteuliwa kuwawakilisha anaodai wanaukoo....Hivyo Mrufani aliwaburuta Warufaniwa Mahakamani akiwa hana hadhi Kisheria (**Locus Stand**) ya kufanya hivyo.*

Following the determination of the district tribunal, the appellant was further aggrieved by the decision hence approached this court and filed a total of six (6) reasons of appeal in **Misc. Land Appeal Case No. 38 of 2022**. (the misc. appeal). Today, when the misc. appeal was scheduled for hearing, this court *suo moto*, noted two (2) faults material to the merits of the case which had caused injustice to the parties, namely:

First, lack of specific address of disputed land with regard to size and location as per requirement of the law in 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 Appeal Case No. 12 of 2021 and **Manyonyi Weswa v. Malibha Njoya**, Misc. Land Appeal Case No. 34 of 2022.

Second, absence of instrument constituting the appointment of the parties as directed by the Court of Appeal in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021.

Subsequent to the cited faults, this court had invited the parties to submit relevant materials on the spotted issues as part

of cherishing the right to be heard as enacted article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] (the Constitution) and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251. In cherishing the right, the appellant submitted that he had testified during the hearing proceedings at the ward tribunal that he owns forty five (45) acres of land but the ward tribunal declined to record the same in the proceedings and judgment and that initiated the case because all sons of **Mzee Isore Maregeri** had already expired and that the family and clan members granted him powers to represent the clan in following the land in dispute.

The first respondent on his part submitted that he showed the land size and demarcations to the members of the ward tribunal during *locus in quo*, but they declined to record in the proceedings. According to him, the land belongs to his father **Mzee Mseti Mango** and has been occupying and using the land in dispute for more than twenty (20) years without any intervention from any person. The second respondent on the other hand, submitted that the land in dispute belongs to his father who expired in 2011, but he was granted the land by his father in 2009 before his expiry, with clear demarcations of foot-paths and sisal trees. The third respondent submitted that her father

had died in 2011, but she has been occupying and using the disputed land since 1948 and the land is huge that its size cannot be stated without specific measurements.

This court noted the two (2) faults in the present appeal and well aware of the precedents of this court and Court of appeal on how appeals like the present one are determined, it cannot be detained in search of other interpolations. The Court of Appeal in **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra), at page 4 stated that:

*It is now settled that, where a part commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is fatal irregularity which render the proceedings incompetent for want of the necessary standing.*

Finally, the court resolved that: the applicant is at liberty to refile the application provided that he is in possession of valid letters of administration of estates. On the other hand, this court in the precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra) stated that unidentified




size and location of the lands in dispute, cannot move this court to grant land right to any of the parties in land contests.

In the present appeal, the record lacks land size and location and the parties have no instruments for necessary standing. In the end, this court is unable to grant land rights to any of the parties and is moved to quash the decision of the district tribunal and set aside its proceedings for up-holding the decision of the ward tribunal which was tainted with irregularities. On the similar note, this court sets aside proceedings and quash decision of the ward tribunal for want of specific size and location of the disputed land and *locus stand* of the parties. I do so without any order to costs as the issues were raised by this court *suo moto* and the dispute may take a fresh course. Having decided so, any party who so wish to initiate land proceedings to contest the disputed land, may do so in accordance to the current laws and procedures regulating land disputes in an appropriate machinery.

It is so ordered.

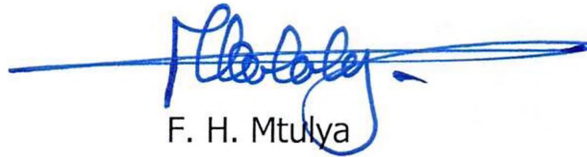


  
F. H. Mtulya

**Judge**

24.11.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, **Mr. Waziri Hussein Isore** and in the presence of the respondents, **Mr. Sokoine Mseti, Mr. Marwa Chogwo, and Mrs. Mkami Sese.**



F. H. Mtulya

**Judge**

24.11.2022