

**THE UNITED REPUBLIC OF TANZANIA**

**(JUDICIARY)**

**THE HIGH COURT**

**(IN THE DISTRICT REGISTRY OF MUSOMA)**

**AT MUSOMA**

**Misc. LAND APPEAL CASE No. 116 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in  
Land Appeal Case No. 18 of 2020; originating from Nyamang'uta Ward Tribunal  
in Land Case No. 9 of 2017)*

**BURENDIRE ISAKWE ..... APPELLANT**

***Versus***

**ITASO ALLY ..... RESPONDENT**

**JUDGMENT**

**01.12.2022 & 01.12.2022  
Mtulya, J.:**

On 13<sup>th</sup> December, 2017, Mr. Burendire Isakwe (the appellant) approached **Nyamang'uta Ward Tribunal Located at Bunda District in Mara Region** (the ward tribunal) and lodged **Land Case No. 9 of 2017** (the case) claiming ownership of two (2) hectares of land. During the hearing proceedings, the appellant claimed the land in dispute belongs to his parents and located at Chamtiro Hamlet within Sarawe Village in Bunda District of Mara Region. The respondent on his part alleged that the land belongs to his parents and is located at

Kiroleri village in Bunda District of Mara Region and is sized in eleven (11) acres. Before the issue of land size and location could be settled to the finality, the ward tribunal resolved that:

*Mdaiwa ameshinda na mdai ameshindwa. Ukubwa wa eneo ni upana hatua 134 na urefu hatua 333.*

The reasoning of the ward tribunal in arriving at the decision displays the following text:

*Mdai ameshindwa kubaini vipimo vyake alivyoonyesha kwa kukata sehemu tatu badala ya sehemu aliyokuwa analalamikia. Eneo la mgogoro kuna mazao ya mihogo ya Bwana Itaso.*

The ward tribunal also noted that the land belonged to the parties' parents but declined to ask them on instruments constituting the appointment of the parties in the dispute as directed by the Court of Appeal in the precedents of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021 and this court in a bundle of precedents (see: **Manyonyi Weswa v. Malibha Njoya**, Misc. Land Appeal Case No. 34 of 2022 and **Waziri Hussein Isore v. Sokoine Mseti & Two Others**, Misc. Land Appeal Case No. 38 of 2022).

Following the decision of the ward tribunal, the appellant on the 2<sup>nd</sup> of December 2021 preferred **Land Appeal Case No. 18 of 2020** in the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) attached with three (3) reasons in disputing the decision of the ward tribunal. After full hearing of the appeal, the district tribunal decided in favour of the respondent with costs to the appellant. The reasoning of the tribunal is found at page 2 of the judgment that:

*Baada ya kuupima ushahidi uliotolewa na wadaawa kwenye Baraza la Kata, nimeona kwamba hakuna ushahidi wa kushawishi kuonesha namna mrufani Burendire Isakwe alivyopata eneo hilo lenye mgogoro na namna alivyoendelea kumiliki. Kwa upande mwingine, **ushahidi unaonesha kwamba baba yake na mrufaniwa aitwaye Ally Masenza alilipata eneo hili la mgogoro kwa kugawiwa na Halmashauri ya Kijiji.***

(Emphasis supplied).

It is unfortunate that the district tribunal noted the discrepancies in names of the villages and owners of the land

in dispute but declined to resolve on which village does the land is located and status of the parties in the case.

Today, when the appeal was scheduled for hearing, this court raised three (3) issues, *suo moto*, and invited the parties to cherish the right to be heard on the matters, namely: first, their legal status in the dispute; second, land size and finally, land location. According to the appellant the land belongs to his parents and have already expired, but will convene clan meeting for letters of administration of his deceased parents. On land size and location, the appellant submitted that the land is located at Chamtiro Hamlet in Sarawe Village of Bunda District as it was verified by 2022 National Census and sized two (2) hectares.

The respondent on his part submitted that he did not know whether there was a need of letters of family representation or administration of the estates of his deceased parents. On size, the respondent submitted that the order of the tribunal was correct on the disputed land, but the land located at Kिलoreli Village in Bunda District and not Chamtiro Village. Finally, the respondent stated that the village councils

of the two (2) cited villages may be convened to resolve the dispute without any problems.

I think, in my considered opinion, it is obvious from the record that parties participated in the present dispute without capacity in instrument constituting the appointment and failure to have the same is fatal irregularity (see: **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**). In the precedent, the Court of Appeal stated, at page 4 of the decision, 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 of Appeal directed that: the applicant is at liberty to refile the application provided that he is in possession of valid letters of administration of estates. The decision being delivered by the Court of Appeal, it is binding in this court without any reservations.


On the other hand, this court in the precedents of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra) and **Waziri Hussein Isore v. Sokoine Mseti & Two Others** (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. Therefore, it is obvious that in the present appeal the decisions of the two lower tribunals in the case is a nullity for want of the cited precedents and provision 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) with regard to the words: *the address of the suit premises or location of the land involved in the dispute.*

Having said so, I see errors material to the merit of the case which caused injustice to the parties, and moved to invoke section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Act) to quash the decisions and set aside proceedings and any orders of the two lower tribunals in the case. I do so without costs as the faults were caused by lay persons, but blessed by the two lower tribunals. In any case, it is this court, *suo moto*, which noted the errors on the record. If any of the parties is still interested in the disputed land, may

initiate fresh and proper land proceedings in a competent authority authorized to deal with land disputes in accordance to the current laws regulating land matters.

It is so ordered.



  
F. H. Mtulya

**Judge**

01.12.2022

This judgment was pronounced in chambers under the seal of this court in the presence of the appellant, **Mr. Burendire Isakwe** and in the absence of the respondent, **Mr. Itaso Ally.**

  
F. H. Mtulya

**Judge**

01.12.2022