

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**LAND APPEAL CASE No. 54 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Tarime  
in Land Application No. 57 of 2015)*

**1. GEORGE SHIRATI** }  
**2. MAGESA FANUEL** } ..... **APPELLANTS**

*Versus*

**MASAKA PETRO MUHERE** ..... **RESPONDENT**

**JUDGMENT**

05.05.2022 & 05.05.2022

**Mtulya, J.:**

On 14<sup>th</sup> September 2015, Mr. Masaka Petro Muhere (the respondent) preferred **Land Application No. 57 of 2015** (the application) in the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) contesting on ownership of a piece of land located at Kenyamanyori Village within Tarime District of Mara Region against Mr. George Shirati and Mr. Magesa Fanuel (the appellants).

The tribunal heard the application and ultimately on 9<sup>th</sup> April 2021 determined the application in favour of the respondent. The appellants were not satisfied with the decision of the tribunal and

consulted learned counsel Mr. Baraka Makowe, learned counsel to draft five (5) reasons of appeal to protest the decision of the tribunal whereas the respondent hired Mr. Tumaini M. Kigombe and Ms. Lilian Makene to file reply to the petition of appeal and argue the contest.

Today morning the appeal was scheduled for hearing. However this court noted *suo moto* a defect on land size and demarcations to distinguish the disputed land and other surrounding lands 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. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021 and **Hashimu Mohamed Mnyalima v. Mohamed Nzai & Four Others**, Land Case Appeal No. 18 of 2020.

Following the detection of the fault, this court invited the parties and their learned counsel to state on the fault and status of the appeal in this court, as part of cherishing the right to be heard as stated in the precedent of **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251.

The first respondent on his part stated that the land in dispute is located at Kenyamanyori area of Tarime and sized 1.5 acres, whereas the appellant submitted that he cannot state with certainty the size of

the land in contest, but owned the same since 1952. When learned counsels of the parties were invited to take the floor of this court they conceded the fault on land size and demarcations and added other faults as reflected on the record of the appeal.

According to Mr. Makowe, the complaint filed by the respondent in the tribunal did not specify size and demarcations and neighbours surrounding the land in dispute and the evidence of land sale agreement between the first and second appellants was not admitted in the application to show exactly size of the land. To his opinion the only remedy in such circumstances is to quash the judgment and set aside proceedings of the tribunal for the dispute to start afresh. Finally, Mr Makowe submitted that the present appeal as shown a vivid breach of the law and this court cannot declare ownership of unknown land to any of the parties.

Mr. Kigombe on his turn submitted that the record of appeal and the proceedings of 18<sup>th</sup> August 2017 display several issues related to disputed land, namely: first, the first appellant in the tribunal did not specify land size; second, there is discrepancies in the proceedings and the land sale agreement entered on 26<sup>th</sup> August 2015 between the first and second appellants as the land agreement shows the land is sized human paces between 92, 58 and 60; and finally, the sale agreement itself is on the record of appeal but was admitted without

abiding the procedures regulating admission of documents in the tribunal hence is not reflected in the proceedings of the tribunal. In his opinion, the discrepancies leave several questions unanswered and even if this court decides the matter today on a rightful owner of the land, it will not solve the dispute rather it will accelerate chaos to the parties and surrounding neighbours during execution. With available remedies, Mr. Kigombe opined the matter be quashed and be tried in accordance to the laws regulating land disputes. The submissions of learned counsels, Mr. Makowe and Mr. Kigombe received support of Ms. Makene, learned counsel.

I glanced the record of this appeal and noted one fault. However, learned minds in Mr. Makowe, Mr. Kigombe and Ms. Makene, acting as officers of this court, noted several other faults in the application and displayed proper course to follow.

It is fortunate that the first fault is regulated in Regulation 3 (2) (b) of the Regulations and precedents of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) and **Hashimu Mohamed Mnyalima v. Mohamed Nzai & Four Others** (supra). For the sake of certainty and predictability of decisions emanating in this court, the practice requires, this application to follow the course. As the fault on land size and demarcations itself dispose of the appeal,

this court does not see any reason to resolve other faults to avoid academic exercise.

Having said so and considering there are faults in the present appeal, I have decided to quash the judgment and decree, and set aside proceedings of the tribunal in favour of the proper application of the law in Regulation 3(2) (b) of the Regulations and the cited precedents. Any party who wish to be declared a rightful owner of the disputed land may prefer fresh and proper application in accordance to the law regulating land matters.

I award no costs in the present appeal as learned minds acted as officers of this court under section 66 of the **Advocates Act** [Cap. 341 R.E 2019] and cherished section 3A & 3B of the **Civil Procedure Code** [Cap. 33 R.E 2019] and in any case, the dispute was not resolved to the finality to identify the rightful owner of the disputed land.

Ordered accordingly.



  
F. H. Mtulya

**Judge**

05.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of the first appellant, Mr. George Shirati and his learned counsel, Ms. Helen Mabula and in the presence of the respondent Mr. Masaka Petro Muhere enjoying legal services of learned counsels Mr. Tumaini Kigombe and Ms. Lilian Makene.



F. H. Mtulya

**Judge**

05.05.2022