

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

**IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

Misc. LAND CASE APPEAL No. 57 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Application No. 157 of 2019)*

MOREMI MANG'ANGO MOREMI ----- APPELLANT

Versus

1. SUZANA MAHIMBO
2. MALIRE MWITA
3. TITO MAHIMBO } ----- **RESPONDENTS**

JUDGMENT

15.03.2022 & 15.03.2022

Mtulya, F.H., J.:

In the course of hearing the present appeal, this court noted that the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Application No. 157 of 2019** (the application) had determined ownership in land which was the subject of contest in another body called **Magange Ward Tribunal** (the ward tribunal) in **Land Dispute No. 31 of 2019** (the case) and the ward tribunal had resolved the case to the finally on the 4th day of November 2019.

The ward tribunal in the case had decided in favour of Suzana Mahimbo Magoti and Marire Mwita Nyambare against Moremi Mang'ango Moremi. The district tribunal on 29th January 2020, had noted existence of the case and ordered for call of the record, as is

depicted at page 2 of the proceedings of the district tribunal conducted on 29th January 2020. Since the order was issued on that date, the district tribunal remained silent on the case until on the 12th October 2020 when Suzana Mahimbo (DW1) admitted the case as exhibit DE.2 in the application, as reflected at page 10 of the proceedings of the district tribunal.

This court noted that the district tribunal had declined to consider and determine the issue of *res judicata* it summoned the parties to submit on the subject as part of the right to be heard enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, [2003] TLR 251 and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44.

The appellant on his part had decided to invite Mr. Daud Mahemba to argue the issue whereas all the three (3) respondents appeared themselves without any legal representation. Mr. Mahemba on his part submitted that the record shows that on 11th February 2019, the order with regard to the point of law was delivered requiring the parties to argue the point on 29th January 2020. According to Mr. Mahemba on this date, 29th January 2020, the district tribunal had noted the case and set preliminary objection hearing on 27th February

2020. However, the hearing was adjourned to 15th April 2020 and later, on 15th June 2020, when pleadings were recorded completed. Finally, on 26th August 2020, the case was scheduled for hearing on merit, against the law regulating points of preliminary objection. Mr. Mahemba submitted further that the case, which was noted by the district tribunal on 29th January 2020 was admitted as exhibit DE.2 by Suzana Mahimbo (DW1) during the hearing of the application on 12th October 2020, as reflected at page 10 of the proceedings in the district tribunal.

Mr. Mahemba finally argued that the point of law was raised, but was not determined to the finality from the proceeding to the judgment, which was delivered on 14th June 2021. To his opinion, Mr. Mahemba, thinks that the fault goes to the merit of the application and prayed this court to nullify the proceedings and any other orders of the tribunal from 29th January 2020 when the district tribunal noted of the case, but dropped determination of the issue of *res judicata*.

The first respondent on her part, she briefly submitted that the fault was caused by the district tribunal and she cannot be condemned for the decline of the district in resolving the status of the case whereas the second and third respondents supported the submission of the first respondent, without any reservations.

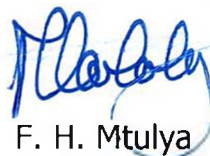
I raised the matter *suo moto*, after noting the laws with regard to determination on points of preliminary objection and *res judicata* were not complied with the district tribunal which is contrary to the law and practice of this court (see: **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999; **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016; and **Director of Public Prosecutions v. Labda Juma Bakari**, Criminal Appeal No. 45 of 2021).

This court is a court of record and has additional duty to ensure proper application of the law by courts and tribunals below (see: section 43(1) (b) of **Land Disputes Courts Act** [Cap. 216 R.E. 2019] and precedents in **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021; **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; and **Mwita Magongo v. Manyama Mageza Rwiswa**, Misc. Land Case Appeal No. 68 of 2021).

Having said so, I have decided to nullify the proceedings and any other orders of the tribunal issued immediately after the day when it noted the existence of the case, on 27th February 2020 to the final determination of the dispute, on 14th June 2021. I award no costs in the present appeal as the issue was raised *suo moto* by this court, and

in any case the matter is not yet resolved to its finality on merit. I remit the case file back to the district tribunal to continue with the application in the proceedings of 29th February 2020, in accordance to the laws and practice regulating land disputes.

Ordered accordingly.



F. H. Mtulya

Judge

15.03.2022

This judgment was delivered in chambers under the seal of this court in the presence of the respondents, Suzana Mahimbo, Malire Mwita and Tito Mahimbo and in the presence of the appellant's learned counsel, Mr. Daud Mahemba.



F. H. Mtulya

Judge

15.03.2022