

**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 Tarime in Land  
Appeal No. 127 of 2019 & Originating from Kyang'ombe Ward Tribunal in Land  
Dispute No. 11 of 2019)*

**WAMBURA MWITA WARYOBHA ----- APPELLANT**

**Versus**

**HAMZA CHACHA NYAMTIMA ----- RESPONDENT**

**JUDGMENT**

15.03.2022 & 15.03.2022

**Mtulya, F.H., J.:**

On 29<sup>th</sup> of day of April 2019, Mr. Wambura Mwita Waryubha (the appellant) sued Mr. Hamza Chacha Nyantima (the respondent) before **Kyang'ombe Ward Tribunal** (the tribunal) in **Land Dispute No. 11 of 2019** (the case). After full hearing of the case, the members of the tribunal gave their opinions and decision was delivered in favour of the late Mzee Chacha Nyantima (the deceased). In order to appreciate the Swahili wording of the tribunal as reflected at page 7 of the handwritten decision, the following text is displayed in this judgment:

*Baada ya maoni ya wajumbe kwisha, Baraza limeamua  
kuwa Hamza Chacha Nyamtima hana hatia katika kesi*

*hii. Shamba daiwa kuanzia leo tarehe 17/10/2019, si shamba la Wambura Mwita Waryoba, ni mali ya Chacha Nyamtima.*

The tribunal arrived to that point after noting all the materials produced in the case and exhibits tendered in the tribunal displayed that the rightful owner of the disputed land is the deceased, Mzee Chacha Nyamtima. Today evening hours when the appeal against the decision of the tribunal was scheduled in this court for hearing, the parties invited legal services of Mr. Emmanuel Gervas and Mr. Daud Mahemba. During the submissions in favour and against the appeal, the dual learned minds noted the defects on *locus standi* and award of the disputed land to the deceased, who was not party to the proceedings.

Following the observation, the dual learned counsels addressed this court as officers of the court in terms of section 66 of the **Advocates Act** [Cap. 341 R.E. 2019]. According to Mr. Mahemba, the tribunal awarded land to a person who was not party in the proceedings before the tribunal hence contravened practice in adversarial system of dispute settlement where only parties are allowed to benefit from their dispute. To his opinion, decisions like the present one will be difficult to execute as the person who is

granted was not party in the dispute and has already expired as is reflected in the proceedings of 26<sup>th</sup> January 2021 in the **District Land and Housing Tribunal of Mara at Tarime** (the district tribunal) in **Land Appeal No. 127 of 2019** (the appeal).

On his part, Mr. Gervas thinks that the dispute failed to join the deceased, Mzee Chacha Wantima or call him as witness after registration of materials which displayed that the owner of the land is Mzee Chacha Wantima. Finally, all learned minds agreed that this court may invite section 43 (1) (a) of **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) in order to revise the proceedings and come up with its own findings and directives. However, the learned minds sharply deferred on costs. According to Mr. Mahemba the appellant had sued wrong party and proceeded with the dispute up to this court hence must pay costs, whereas Mr. Gervas thinks that the appellant is a lay person and came to this court in search of justice and justice was attained today, hence he cannot be condemned for costs.

On my part, I have perused the record of this appeal and found that the submissions of the learned minds are pretty correct. The dispute was between the appellant and respondent, but the tribunal awarded the disputed land to the third person, the deceased, who

was not party in the proceedings. The decision of the tribunal was blessed by the district tribunal in the appeal. This court is a court of record and must ensure proper application of laws by the tribunals below (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021).

In the present appeal, the two (2) lower tribunals violated the established law on both *locus standi* and want of proper parties in suits (see: **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203; **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; and **Mwita Magongo v. Manyama Magesa Rwisu**, Misc, Land Case Appeal No. 68 of 2021).

The faults in the instant appeal are vivid that cannot be left to remain on record. I have therefore decided to quash the decisions, orders, and set aside proceedings of the lower tribunals for want of proper record. I decline to award costs in the present appeal as the dual learned minds acted as officers of this court and in any case the faults were caused by the appellant but blessed by the two (2) lower tribunals. Any interested party may initiate fresh and proper

proceedings in a competent body in accordance to the laws regulating land matters.

Ordered accordingly.

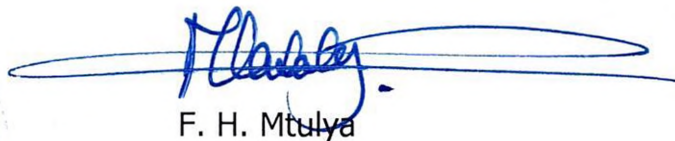


F. H. Mtulya

**Judge**

15.03.2022

This judgment was delivered in chambers in the presence of the parties, Mr. Wambura Mwita Waryobha and Mr. Hamza Chacha Nyatima and in the presence of their learned counsels, Mr. Emmmanuel Gervas and Mr. Daud Mahemba.



F. H. Mtulya

**Judge**

15.03.2022

