

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 3 OF 2022

(Arising from the District Land and Housing Tribunal for Mara at Tarime

in Land Appeal No. 85 of 2019 & Original from Kyangasaga Ward

Tribunal of in Application No. 23 of 2018)

SAID KAHANA RWAKI APPELLANT

Versus

1. NSANDA MABHARI SAGIRE

2. KISOKU MABHARI SAGIRE RESPONDENTS

JUDGMENT

25.05.2022 & 25.05.2022

Mtulya, J.:

In 2018, Mzee Said Kahana Rwaki (the appellant) sued his two sisters-in-law, Mama Nsanda Mabhari Sagire and Kisoku Mabhari Sagire for a piece of land located at Esuka area within Gabimori Village of Kyangasaga Ward in Rorya District of Mara Region.

The dispute was registered at **Kyangasaga Ward Tribunal** (the ward tribunal) in **Land Dispute No. 23 of 2018** (the dispute). During the hearing of the dispute, the appellant registered evidence which shows that: *shamba hilo ni la baba yangu Rwaki, sasa kuna vijana kumi na tano (15) wanaitengemea shamba hilo. Shamba ni la familia ya Mzee Rwaki.*

In replying the allegations of the appellant, the first respondent narrated at the ward tribunal that: *shamba ni la Mzee Mabhari alinioa mwaka 1966. Mabhari ana shamba lake na Saidi ana shamba lake*, whereas the second respondent indicated that: *shamba hilo ni la Mzee Rwaki na Sagire. Mama Mkwe alikuwa analima ndilo Mabhari na Kahana waliita **Ukoo wa Watunda** wakagawana shamba hilo watu wanne (4), watu wawili wako hai na wawili wamekufa.*

After a full hearing and considering all registered materials in the dispute, the ward tribunal decided in favour of the appellant and reasoned that the respondents' husband, Mzee Mabhari Sagire was invitee on the disputed land. This reasoning was overruled in an appeal preferred by the respondents at the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) in **Land Appeal No. 85 of 2018** (the appeal). The reasoning of the district tribunal is found at page 3 of the judgment that: *warufani wametumia ardhi yenye mgogoro kwa miaka 52, kuanzia mwaka 1966 hadi mwaka 2018.*

However, both the ward and district tribunals were silent on detailed descriptions of the disputed land including the size and demarcations surrounding the land. Similarly, the proceedings of the ward tribunal on record is silent on: first, the words *Esuka area* and *Gabimori Village*, and second, *Watunda Clan Minutes*, and third, whereabouts of Mzee Mabhari Sagire, Mama Mkwe, and finally the two

(2) living persons from the four (4) who were initially allocated the land as extracted from the narrations of the first respondent in the ward tribunal that: *wakagawana shamba hilo watu wanne (4), watu wawili wako hai na wawili wamekufa.*

This court being fully aware of the laws regulating land disputes enacted 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) as cherished in the precedents of this court in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021 & **Hashimu Mohamed Mnyalima v. Mohamed Nzia & Four Others**, Land Appeal Case No. 18 of 2020, and Court of Appeal decisions in **Ramadhani Omar Mbugani v. Asia Ramadhani**, Civil Application No. 173/12 of 2021 & **Ally Ahmed Bauda v. Raza Hussein Ladha Damji & Others**, Civil Application No. 525/17 of 2016, invited the parties to cherish the right to be heard as enacted in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251.

The appellant on his part briefly explained that the disputed land originally belonged to *Werenda Clan*, and not *Watunda Clan*. According to the appellant, the Werenda Clan had left behind two sons,

viz: Mzee Sagina and Mzee Rwaki, and each had left three sons, and since ancient times the land in dispute was occupied and used by the descendants of Mzee Rwaki, who had left the same land to his sons, including Mzee Said Kahana Rwaki, the appellant. In his opinion, the appellant alleged that Mzee Sagire had three (3) sons, namely: Mzee Mabhari Sagire, Mtunda Sagire and Masinge Sagire, who owned separate land, but currently the wives of Mzee Mabhari Sagire are disputing on Mzee Rwaki's land, where Mzee Mabhari Sagire was an invitee.

The first respondent in reply of the uncertainties identified by this court stated that the farmland is located at Esuka area of Gabimori Village in Rorya District and belongs to Mzee Mabhari Sagire who had been in occupation since 1966, whereas the second respondent stated that she got married to Mzee Mabhari in 1980 and have been occupying and using the land since then without any interruptions.

On my part, I have invited the parties to assist this court on interpretation of two important issues, namely: first, the provision in Regulation 3 (2) (b) of the Regulations as was interpreted in the cited precedents of this court; and second, attachment of instruments constituting the appointment of the parties in the record as directed by the Court of Appeal in the above mentioned precedents. The invitation of the parties was based on the additional duty of this court in

ensuring proper application of the laws by the lower tribunals and addressing the vivid irregularities on record (see: **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra); **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; and section 42 & 43 of the **Land Disputes Courts** [Cap. 216 R.E. 2019]).

However, the parties registered historical particulars and chronological narrations of events in their village and their ancestors without replying the requirement of the law. I am aware the parties are lay persons from Esuka area of Gabimori Village, but this court cannot grant undescribed or unknown lands and invite more chaos in execution stages, taking note that several individuals were mentioned to have been allocated the clan land without specific size and location.

It is unfortunate that the record is silent on whereabouts the key members of the clan who are mentioned in the proceedings of the ward tribunal, namely: Mzee Mabhari Sagire, Mama Mkwe, and finally the two (2) living persons from the four (4) who were initially allocated the land. There are unanswered questions in this dispute: if the mentioned people are alive, where are the instruments of representation or if they are dead, where are the letters of administration. This court cannot declare either party as a rightful owner of the land in such circumstances.

The directives of our superior court in the recent decision delivered on 12th of this month, 2022, at page 4 of the precedent in **Ramadhani Omar Mbugani v. Asia Ramadhani** (supra), is that:

*Letters of administration being an instrument through which the applicant traces his standing to commence the proceedings is an essential ingredient of the application in whose absence the Court cannot have any factual basis to imply the asserted representative capacity. **It is now settled law that a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached.** Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing.*

(Emphasis supplied).

In the present appeal, the parties have initiated their dispute in representative capacity without instruments constituting their appointments. The appellant stated that the disputed land belongs to his father Rwaki, the first respondent stated the farm belongs to his husband, Mzee Mabhari Sagire, and the second respondent stated that the land belongs to Mzee Rwaki and Sagire, and other two (2) living

persons and the record is silent on any reasons why the proper parties were not invited in the dispute.

In law that goes to *locus stand* issue and may crop up at any stage of the proceedings and since the issue relates to legality of the matter, may vitiate proceedings. There is currently large family of precedents on the subject (see: **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; **Mwita Magongo v. Manyama Magesa Rwisa**, Misc, Land Case Appeal No. 68 of 2021; **Johansen Elias v. Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019;; **Ally Ahmad Bauda v. Raza Hussein Ladha Damji & Two Others**, Civil Application No. 525/17/ of 2016; **Ramadhani Mumwi Ng'imba v. Ramadhani Jumanne Sinda**, Misc. Land Case Appeal No. 8 of 2012; **Misana Masondere & Three Others v. Milengo Magesa**, Land Case Appeal No. 90 of 2021; and **Lujuna Shubi Balonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203).

Similarly, the decision in **Hashimu Mohamed Mnyalima v. Mohamed Nzia & Four Others** (supra) is very exhaustive of the subject of land descriptions. At page 3 of the decision, this court stated:

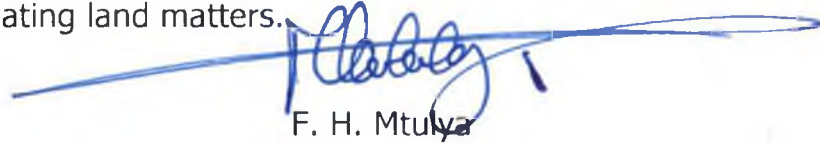
From the practice of this court in favour of the stated position on the need of sufficient description of the land in plaint or prescribed forms, four (4) reasons of this court

may be extracted, viz: first, the need of sufficient or precise description of land size, location and boundaries surrounding the land is for the court or land tribunals to distinguish lands in disputes with any other lands; second, courts cannot grant something which was never pleaded in plaint or prescribed forms; third, to ascertain and grease execution of decrees emanated from decisions in land cases; and finally, certainty and predictability of precedents of this court.

In the instant appeal, the parties and lower tribunals are silent on land size and demarcations surrounding the disputed land to distinguish the land with other lands, even in their declarations of ownership to the parties. This is unfortunate situation which cannot be allowed on record. It is a vivid violations of both the enactment in the cited enactment and precedents. This court cannot close its eyes when it sees vivid breach of the laws of this State.

Having said so and noting this court is a court of law and justice, I have decided to follow the course of previous decisions of this court and Court of Appeal in nullifying the proceedings and decisions of both tribunals below. I do so without any order as to the costs. The reasons are quietly obvious that: first, the faults were caused by the parties but blessed by the lower tribunals; second, the dispute was not

resolved to its finality to identify the rightful owner of the land; and finally, the parties in the present dispute are relatives and may wish to prefer traditional method of dispute settlement in amicable way through their clan members. However, if they so wish, to initiate fresh and proper proceedings, they are at liberty to do so in accordance to the laws regulating land matters.



F. H. Mtulya

Judge

25.5.2022

This judgment is delivered in chambers under the seal of this court in the presence of the parties and their relatives in their support Mr. Kassim Said Kahana Rwaki and Mr. Nasibu Mabhari Sagire.



F.H. Mtulya

Judge

25.05.2022