

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 55 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Tarime
in Land Application No. 24 of 2019)*

SHARIFF MUGENDI CHACHA APPELLANT

[As the administrator of the estates of the
late Chacha Munanka]

Versus

MOBWE MAGINGA RESPONDENT

JUDGMENT

31.05.2022 & 31.05.2022

Mtulya, J.:

This court was invited today morning to hear and resolve an appeal in Shariff Mugendi Chacha (the appellant) and Mobwe Maginga (the respondent) in **Land Appeal Case No. 55 of 2021**. When the parties were called to take the floor of the court, the appellant marshaled Mr. Baraka Makowe, learned senior counsel to invite the provisions in section 43 (1)(b) & 43(2) of the **Land Disputes Courts Act** [Cap. 216 R. E 2019] (the Act) for the court to revise the proceedings of the the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) in **Land Application No. 24 of 2019** (the application) and make decision on errors material to the merit of the application.

In the opinions of Mr. Makowe, the application had material irregularities which require interventions of this court in checking: first, whether the appellant had the necessary standing in the tribunal; second, whether there was description of the disputed real property in the Land Application Form (the application form); and finally, whether filing of written statement of defence (the defence) out of statutory time had the leave of the tribunal.

In substantiating the raised issues, Mr. Makowe alleges that the appellant asserted in the tribunal that he is an administrator of estates of the late Mzee Chacha Munanka, but no instrument which was filed in the application to prove the allegation. On the second point, Mr. Makowe contended that the application form filed in the tribunal to initiate proceedings had no land descriptions to distinguish the disputed land and other surrounding lands.

In the final point, Mr. Makowe submitted that the respondent had filed a Written Statement of Defence in the application after four (4) months without leave of the tribunal as per requirement of the law in Regulation 7(1)(a) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) and precedent in **Kalyango Construction & Building Contractors Ltd v. China ChongQuing International Construction Corporation (CICO)**, Civil Appeal No. 29 of 2012.

Mr. Makowe argued that the three (3) highlighted faults rendered the application a nullity and prayed this court to quash the judgment and set aside the proceedings of the tribunal in favour of the cited Regulations and precedent. In replying of the three (3) faults, the respondent, who appeared in person without any legal representation, conceded the points and prayed the matter be remitted back to the tribunal for proper record. According to the appellant, she would be excited to attend new proceedings regarding the disputed land as the appellant claims different land from the one which he initially had dispute with another person.

I have perused the record of the present appeal and found that the appellant had initiated the application in tribunal on 5th April 2019 claiming to be an administrator of the estate of the late Chacha Munanka on. However, no any instrument was pleaded or tendered in the tribunal to validate his allegations. In cases related to administration of estates, like the present one, any party who initiates proceedings must plea and register an instrument constituting the appointment, commonly known Form Number Four, to demonstrate that he has *locus standi*.

The Court of Appeal in the recent decision of **Ramadhani Omar Mbugani v. Asia Ramadhani**, Civil Application No. 173/12 of 2021, at page 4 of the decision stated that:

It is now settled law that a party who commences proceedings in representative capacity, the instruments constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument renders the proceedings incompetent for want of the necessary standing.

This thinking of our superior court was invited and appreciated by this court last week, specifically on 25th May 2022 in the precedent of **Said Kahana Rwaki v. Nsanda Mabhari Sagire & Another**, Misc. Land Appeal Case No. 3 of 2022 and this week in **Denis Kuboja Mbuge v. Loyce M. Wambura**, Land Appeal Case No. 44 of 2021. In settled matters, like the present one, this court has no mandate to invite other interpretations. I will follow the course appreciated by this court and the Court of Appeal.

In the present appeal, record shows that the application in the tribunal was preferred on 5th April 2019 and on the first mention date, 6th May 2019, both parties appeared in the tribunal and their learned counsel on 16th September 2019. This day, 16th September 2019, the record shows that the respondent filed the defence and Mr. Onyango, learned counsel for the applicant had received the same and stated that he had no any rejoinder whatsoever, and in the end, he prayed for the hearing date.

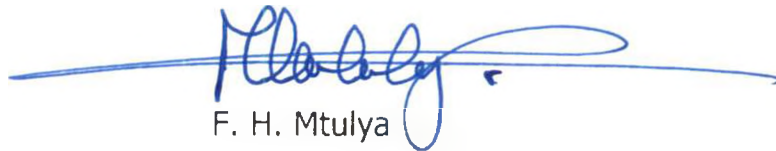
Perusing the data on days from 6th May 2019 to 16th September 2019 is nearly four (4) months which is in breach of twenty one (21) days rule enacted under Regulation 7(1) (a) of the Regulations. The record is also silent on plea or grant of leave to file the reply of the appeal or reasons of delay as per law in Regulation 7 (3) of the Regulations. However, the tribunal invited Regulation 8 (1) of the Regulations and proceeded with the hearing of the application. This was a obvious breach of the cited provisions of the Regulations.

Similarly, the tribunal blessed the application of the appellant and continued with the hearing without inquiring the specific size and location of the land as per Regulation 3 (2) (b) Regulations as interpreted in the precedents of **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. At the third paragraph of the application form, the appellant initiated the suit complaining on the land located at *Magana within Tarime Town Council*.

This general statement was not supported by any documentary evidence in terms of title deed or any other attachment, considering the area cited is within the township of Tarime District. This is a vivid breach of the law in the cited Regulation and precedents.

Having said, so and considering the alluded faults, which have caused injustice to the parties, I have decided to invite section 43 (1) (b) & 43(2) of the Act, and I think it is appropriate to quash the judgment and set aside proceedings of the tribunal in the application for want of proper application of the cited laws in the Regulations and precedents of this court and our superior court. I do so without any order as to costs. The reasons are obvious that the errors were initiated by the appellant, but blessed by learned officers of the tribunal in resolving the application. The parties cannot be accountable in a situation like the present one.

Ordered accordingly.



F. H. Mtulya

Judge

31.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of the parties, Mr. Shariff Mugendi Chacha and Ms. Mobwe Maginga and in the presence of learned senior counsel, Mr. Baraka Makowe for the appellant.



F.H. Mtulya

Judge

31.05.2022