

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

LAND APPEAL No. 8 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at
Musoma in Land Application No. 128 of 2021)*

JOHN PETRO MALIMA APPELLANT

Versus

JOSEPH MATARUMA MAKURI RESPONDENT

JUDGMENT

08.03.2023 & 09.03.2023

Mtulya, J.:

Mr. John Petro Malima (the appellant) was aggrieved by the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Application No. 128 of 2021** (the application) hence preferred the present appeal in this court and registered five reasons to protest the decision of the district tribunal in the application, which decided in favour of **Mr. Joseph Mataruma Makuri** (the respondent). The main complaints of the appellant, in brief shows that: first, the respondent failed to describe the disputed land; second, the respondent invaded the disputed land in 2004; third, the district tribunal did not consider

evidence of questionnaire; fourth, the respondent did not tender any exhibit; and finally, the district tribunal failed to make full analysis of the appellant's witnesses and evidences. In replying the petition of appeal, the respondent had resisted all reasons of appeal.

The parties were summoned to appear and register relevant materials in the appeal yesterday morning and both appeared without any legal representation. In his brief submission in favour of the appeal, the appellant submitted briefly that: first, the respondent had failed to mention demarcations and neighbors surrounding the disputed land; second, the appellant had found the respondent trespassed in the disputed land in 2007 when he returned from nursing his father at Bisumwa area; third, there is exhibit questionnaire which resolved the land in dispute, but was never considered by the district tribunal in its judgment; fourth, the appellant had produced plenty of evidences against the respondent, but the district tribunal remained silent on the subject; and finally, the appellant submitted that he brought in the district tribunal **Nyakatende Village Chairman** to testify in his favour and testified that the land belongs to the appellant, whereas the respondent brought witnesses who just testified that the land belongs to the respondent, without any other details.

Replying the submissions of the appellant, the respondent contended that: first, the judgment of the district tribunal at page 2 shows all regarding the disputed land's demarcations and neighbours, and that the **Land Application Form** provides size and value of the land; second, the appellant had brought in the district tribunal different testimony contrary to the complaint in the appeal as in the district tribunal testified to have left the disputed land in 1997 and returned in 2007 and further he replied during cross examination that he had not erected any building in the disputed land; third, there were no questionnaires produced during the hearing in the district tribunal, but were attached in present petition of appeal; fourth, the appellant had produced only one exhibit of notice of vacation in the disputed land; and finally, the respondent's evidences were much heavier than that of the appellant because the respondent had invited a neighbor who is to the disputed land, Mr. Fidelis Budigo. In the opinion, of the respondent, the Village Chairman was invited in the application in personal relation with the appellant, he did not produce any exhibits in the district tribunal and lives far away from the disputed land.

Rejoining the submission of the respondent, the appellant insisted his earlier submission that: first, the area is currently

planned by the ward tribunal members; there are three ruins of his father in the disputed land; third, the district tribunal had expunged exhibit questionnaire; fourth, the appellant had produced several exhibits in the district tribunal which were prepared by the village authorities; and finally, the Village Chairman lives in the same hamlet of Seka and knows the area in dispute.

I have scanned the record of present appeal and found the parties had a dispute on the same land since 2008 filed at the **Nyakatende Ward Tribunal** (the ward tribunal) in **Land Dispute No. 28 of 2008** (the dispute) decided on 11th May 2009 in favour of the appellant. However, the record is silent on the execution status of the decision.

The record shows further that the respondent had preferred **Land Dispute No. 11 of 2014** in the same ward tribunal in 2012 complaining on the same land, which was decided in his favour. The decision was protested at the district tribunal in **Land Appeal No. 185 of 2014**, and the district tribunal had decided to quash the proceedings and decision of the ward tribunal in the **Land Dispute No. 11 of 2014** for want of necessary standing of the parties. The reasoning of the district tribunal in the judgment

delivered on 8th January 2016, at page 2 of the decision, shows that:

...both parties in this appeal claim to have acquired ownership of the disputed land after the death of their father. However, none has record of their father's estates administered. There is no any proof that any of the parties' estates was administered...disputes of this nature cannot conclusively be decided if there has never been any administrator of the estates of the deceased whose property is now in dispute...the tribunal entertained this matter before it, while the parties legally had no powers to appear before it.

Finally, the district tribunal advised at page 3 of the judgment that: *a party that shall comply with the required conditions of the law may file a fresh application.* The judgment of the district court in **Land Dispute No. 11 of 2014** remains intact on record to date without any interference. Following the advice, the respondent approached the district tribunal on 8th September 2021 and filed the application praying to be declared the rightful owner of the disputed land without any specific letters of administration of the deceased estates on his name. However, the respondent had attached in the **Land Application Form** decision of

the **Musoma Urban Primary Court** (the primary court) in **Probate Cause No. 160 of 2019** (the cause) displaying completion of cause. The order of the primary court in the cause shows that:

*Eneo la shamba lililoko kijijini Seka mali ya marehemu
ligawiwe kwa walengwa ambao ni Joseph Makuri, Albert
Joseph, Deogratias Joseph na Charles Joseph.*

The record is silent on: first, whether *Joseph Makuri* is the same person as Joseph *Mataruma Makuri* (the appellant); size, location and demarcations of lands divided to each particular person mentioned in the cause; and finally, whether the appellant filed the application on behalf of all other beneficiaries indicated in the order of the primary court or in his personal capacity. It is unfortunate that the respondent is silent in the **Land Application Form** filed in the application at the district court on necessary standing which was ordered and advised by the district court in the **Land Appeal No. 185 of 2014**. Similarly, the respondent is silent in his written statement of defence in the application at the district tribunal on his status on the subject.

Today afternoon, the parties were summoned to reply the question of necessary standing as part of cherishing the right to be heard enacted in article 13 (6) (a) of the **Constitution of the**

United Republic of Tanzania [Cap. 2 R.E. 2002] and resolved in the precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251 and **R.S.A. Limited v. Hanspaul Automechs Limited & Another**, Civil Appeal No. 179 of 2016. The parties registered relevant materials with different views. According to the appellant the decision of the district tribunal in the **Land Appeal No. 185 of 2014** must be protested in superior court and he will prefer an appeal to that effect, whereas the respondent submitted that the respondent's father had several acres and the respondent was awarded only six (6), which are in dispute.

According to the respondent, there is in place decision of the primary court in the cause which granted the respondent and two (2) grandsons of **Makuri Bhurerwa Nyantamirwa** (the deceased), the respondent's father. In the respondent's opinion, the land of the deceased was distributed to three persons and there is no problem with that. Finally, the respondent submitted that it's the appellant who had declined the order of the district tribunal in the **Land Appeal No. 185 of 2014**.

However, the record is silent on the distribution of the land stated by the respondent. Additionally, the respondent admitted that the appellant did not abide with the decision of the district

tribunal in the **Land Appeal No. 185 of 2014**. It is also unfortunate the parties are in agreement that the appellant had no necessary standing in the application. The directives of the Court of Appeal issued on 12th May 2022 in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021, shows that:

...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 fatal irregularity which renders the proceedings incompetent for want of necessary standing...

The position has been cherished in a bunch of decisions of this court and the Court of Appeal (see: **Ally Ahmed Bauda** (Administratort of the Estate of the Late Amina Hussein Senyange) v. **Raza Hussein Ladha Damji & Others**, Civil Application No. 525/17 of 2016; **Mwita Nyabare v. Julius Ngendo Mkilia**, (PC) Civil Appeal No. 26 of 2022; **Alfred Mawiri Odi v. Isack Onyango Ochuodho**, Misc. Land Case Appeal No. 69 of 2021; **Mwita Magongo v. Manyama Magesa Rwisu**, Misc, Land Case Appeal No. 68 of 2021; **Johansen Elias v. Paskarates Paschal**, Misc. Land Appeal No. 53 of 2019; **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).

Having said so, and noting the parties have not fully complied with the directives in the judgment of the district tribunal in **Land Appeal No. 185 of 2014**, and being aware of the indicated precedents of the Court in **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra) and this court in **Mwita Nyabare v. Julius Ngendo Mkilia**, (supra), I am moved by the powers of this court enacted in section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** to quash the judgment and set aside proceedings of the tribunal in the application as I hereby do so. I do so without costs as the wrong was committed by the parties, but blessed by the district tribunal. Any interested party in the contested land may wish to initiate fresh and proper land dispute in appropriate authority in accordance to the current laws regulating land contests.

Ordered accordingly.




F. H. Mtulya

Judge

09.03.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. John Petro Malima** and in the presence of the respondent's representative, **Mr. Philipo Emilian Mwaheza**.



F. H. Mtulya

Judge

09.03.2023