

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPLICATION NO. 7 OF 2022

*(Arising from the decision of the District Land and Housing Tribunal for Babati in
Land Application No. 28 of 2018)*

RUKIA MOHAMED KAIRA (an administratrix of the estate of the late
MOHAMED KAIRA**APPLICANT**

VERSUS

JUMANNE ALLY KWEJI (as administrator of the estate of the late **IBRAHIM
SALIMU HOTI**.....**RESPONDENT**

Date of last order: 26/1/2023

Date of Ruling: 10/3/2023

RULING

BARTHY, J.

This application for revision as lodged by the above-named applicant, is made under Sections 43 (1) (b) and 51 (1) of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) and Section 95 of the Civil Procedure Code [CAP 33 R.E 2019], (the CPC) for the following reliefs;

- 1. That this honourable court be pleased to call and examine
the records of the Babati District Land and Housing
Tribunal on the Land Application No. 28 of 2018 to see*



whether there has been an error material to the merits of the case involving injustice, revise the proceedings and to order accordingly.

2. Costs of application provided for.

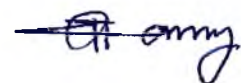
3. Any other relief(s) this honourable court deem fit and just to grant.

The application has been taken at the instance of **MLEMETA AND ASSOCIATE ADVOCATES** and it is supported by an affidavit affirmed by the applicant herein.

When the application was placed before this court for hearing, Messrs. Thadei Lister and John L. Lundu learned advocates appeared for the applicant and the respondent respectively. The application was disposed of orally.

Prior the hearing had commenced, Mr. Lundu the learned advocate for the respondent informed the court that he was not contesting the application.

The brief facts culminating to the instant application are that; the respondent herein lodged Land Application No. 28 of 2018 before the District Land and Housing Tribunal for Babati (the DLHT) against the late



Mohamed Kaira now the deceased as the respondent before the tribunal. The center of dispute being un-surveyed piece of land situated at Orongadida Village within Babati District in Manyara region (the suit land).

It was alleged that; the respondent herein sought for declaratory order to declare him the lawful owner of the suit land. Before hearing of the matter at the tribunal had commenced, the respondent passed away.

The tribunal was informed on the demise of the deceased who was the respondent before it. Therefore, the trial chairperson ordered the amendment of the application to join the administrator of the deceased's estate in the matter.

No application was made to join the administrator as ordered by the court. The record shows that on 19/4/2022 the respondent's advocate herein prayed for the matter to be abated against the applicant and the respondent be declared the lawful owner of the suit land.

The prayer which was granted by the trial tribunal. Following the said order, the administratrix of the decease filed the application for revision to challenge the decision of the tribunal.

A handwritten signature in blue ink, appearing to read 'A. A. M.' or similar, with a horizontal line through it.

For this court to invoke its revisional powers, the applicants must show that there is an error material to merits of the case involving injustice.

I have carefully gone through the entire record of the tribunal where the record reveals, the order made by the chair person was very clear that the respondent herein had to make the amendment to substitute the name of the deceased Mohamed Kaira with that of the administratrix of his estate.

Generally, when either party dies in the process of hearing, the surviving party has to make an application to be joined in the proceedings as provides under rule 1 and 3 of Order XXII of the CPC.

In terms of Order XXII Rule 1 of the CPC the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives. As the law has been clear that the death of the plaintiff or defendant shall not cause the suit to abate when the right of action exists in favour or against the person at the time of his death survives to and against his representative.

As decided by the Court of Appeal in the case of **Sharifu Nuru Muswadiku v. Razakyasau & Another**, Civil Appeal 48 of 2019, [2020] TZCA 1914 (18 December 2020) where it held; as the general rule, civil



actions survive death of the parties where the right or duty survives. The court went further to decide that, the proceedings before the tribunal and the subsequent appeal to the High Court were a nullity for being conducted in the absence of the second respondent's legal representative.


The matter before the tribunal has to suffer similar fate. Consequently, I invoke the powers of revision vested to this court under Section 41 (1) (b) of the Act and proceed to revise the proceedings of the tribunal from 19/4/2022 and the subsequent orders made by the chairperson. I remit the matter to the tribunal to allow personal representative of the deceased to be joined and the matter be heard accordingly.

I further order hearing of the matter be expedited taking into account the matter has been pending in court since 2018. Considering the circumstances of this case, I give no order as to costs.

Order accordingly.

Dated at Babati this 10th day of March, 2023.




G. N. BARTHY,
JUDGE
10/3/2023

Delivered in the presence of Mr. Kalori Chami holding brief of Mr. Tadey Lister the counsel for the applicant and Mr. John J. Lundu the counsel for the respondent and the parties in person.