

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

AT MUSOMA

LAND APPEAL No. 18 OF 2023

*(Arising from in the District Land and Housing Tribunal for Mara
at Musoma in Land Application No. 135 of 2020)*

CONSOLATHA CYPRIAN MALINDI APPELLANT

Versus

**1. MAINGU MAGESA
2. JOHN MWIGURA
3. YUSUPH THOMAS**



..... RESPONDENT

JUDGMENT

19.04.2023 & 19.04.2023

Mtulya, J.:

In the present appeal record shows that **Consolatha Cyprian Malindi** (the appellant), on 10th September 2020, had approached the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) and sued **Maingu Magesa** (the first respondent) & **John Mwigura** (the second respondent) in **Land Application No. 135 of 2020** (the application) for a parcel of unsurveyed land located at Rwamlimi Ward within Musoma Municipality in Mara Region.

In the complaint document Land Form No. 1A (the land form) which initiates proceedings in the tribunal, the appellant claimed to have bought the disputed land from one, **Yusuph Thomas** on 16th December 2009 for Tanzanian Shillings Two Hundred Sixty Thousand Shillings (260,000/=Tshs). However, the appellant in the land form was silent on size and

demarcations surrounding the land in order to distinguish it from other lands in Rwamlimi Ward.

During the proceedings, specifically on 29th March 2021, the tribunal noted **Yusuph Thomas** is a necessary party in the application and was not listed in the complaint hence ordered him to be joined in the contest as third respondent. During the prosecution hearing, the appellant had testified that the third respondent had sold to her a land sized 45 x 35 human steps for the cited amount. However, the appellant had declined to mention location and demarcations surrounding the disputed land.

Replying the complaint, the second respondent testified to be unaware of the appellant's land located at Rwamlimi area, but he bought the land from one, **Shukurani Mko** on 9th October 2016 and produced Tittle Deed No. 2754 of the Farm No. 4 at Kyagangara Area within Musoma Township sized two decimal point two five zero four (2.2504) hectares (the title deed). The tittle deed was admitted in the application as exhibit D. 2.

The tribunal had noted the confusions and discrepancies brought in the application by the parties regarding names of the location of the disputed land and demarcations of the same in the form and during hearing of the application. The tribunal was also well aware of the enactment of the law in Regulation 3(2) (b) of the **Land Disputes Courts (the District Land and Housing**

Tribunal) Regulations GN. No. 174 of 2003 (the Regulations) regulating address of the suit premises or location of lands involved in disputes. However, the tribunal decided to decline the same and finally at page 7 of the judgment decided in favor of the second respondent, and at page 6 had reasoned that:

Kwa lugha rahisi wakati Mleta Maombi akidai kuuziwa eneo hilo na Mjibu Maombi No. 3, hiyo tarehe 16.12.2009, eneo hilo tayari lilikuwa chini ya umiliki wa mtu mwingine toka tarehe 13 Machi 1987

It is unfortunate that the record is silent on inquiry as to whether Kyagangara area of Musoma Township is similar and the same to Rwamlimi area of Musoma Municipality. The record is also silent on the move into visitation to the *locus on quo* to ascertain whether the parties were disputing on the same and similar land or different lands and to what extend the trespass had occurred.

The law in Regulation 3 (2) (b) of the Regulations had already received precedent in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Appeal No. 12 of 2021 to require address of the suit premises to be specific in particulars of the location for easy execution of decisions emanating from courts of law. This court after noting the fault and the position of the law in enactment and precedent, had summoned the parties

today for appeal hearing and explanation on the subject, in consideration of the cited enactment and precedent. The appellant on her part submitted briefly that he did not sue the second respondent for his land in tittle deed, but the first respondent who had trespassed and caused damage to her property house erected at Rwamlimi Ward. Regarding specific location of the land, the appellant submitted that she could not specify boundaries and neighbors because she was not living in the disputed land.

The third respondent on his side submitted that he had bought the land from **Manyonyi Kashokoro** and sold the same to the appellant and that the land in dispute is at Rwamlimi area and not Kyagangara area as claimed by the second respondent. The first and second respondents on their part had decided to invite legal services of **Mr. Evance Njau**, learned counsel, to reply the raised issues. According to Mr. Njau, the identification of the land in dispute in terms of certainty of the location was important and the tribunal was required to visit *locus in quo*. In his opinion, the failure to visit the scene of the land has caused chaos up to this appeal. However, Mr. Njau thinks that exhibit D.2 was tendered in the tribunal to show land size, location and demarcations hence it may be invited to resolve the dispute.

In my opinion the initial document which initiated the dispute did not comply with the requirement of the law in

Regulation 3 (2) (b) of the Regulation and directives of this court issued in the precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra). The breach of the law at the initial stages of the proceedings in the application cannot make a good end of the dispute. This court is a court of law and justice with additional mandate to ensure proper application of laws in enactment and precedents. It is duty bound to address vivid breach of the law and take necessary steps to rectify the same. It cannot justifiably close its eyes when there is glowing crack of the law to cause injustice to the parties.

Having said so, I invoke the powers of this court enacted in section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** to revise the proceedings of the tribunal as it appears there has been error material to the merit of the case which had caused injustice to the parties. I am therefore moved by the indicated section to set aside all proceedings and quash judgment and any other orders of the tribunal for want of proper application of Regulation 3 (2) (b) of the Regulations and directives of this court in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra). I do so without costs as the fault was initiated by lay person, the appellant and blessed by learned person in the tribunal.

In the end, I cannot pronounce ownership of uncertain disputed land under the present circumstances. Any party who

so wish to be pronounced as a rightful owner of the disputed land may initiate proceedings in accordance to the current laws and procedures regulating land disputes.

Ordered accordingly.





F. H. Mtulya

Judge

19.04.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Consolatha Cyprian Malindi**, third respondent, **Mr. Yusuph Thomas** and in the presence of **Mr. Evance Njau**, learned counsel for the first and second respondents.


F. H. Mtulya

Judge

19.04.2023