

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA**

MISC. LAND APPEAL NO. 47 OF 2022

(Originating from Land Appeal No. 14/2020 of District Land and Housing Tribunal of
Kigoma before Hon. F. Chiniku Chairperson, Original Land Case No. 14/2019 of
Nyumbigwa Ward Tribunal)

KENETH ANSELUMU NSHUSHI APPELLANT

VERSUS

NASHON WILLIAM SABIBI..... RESPONDENT

JUDGMENT

21/2/2023 & 21/4/2023

L.M. Mlacha,J

The parties in this appeal are neighbours holding their respective pieces of land at Nyanguge street, Nyumbigwa ward Kasulu district. In 2019 the appellant, Keneth Anselumo Nshushi, saw that part of his land had been cut by the respondent, Nashon William Sabibi and sold to Mr. Majaliwa Ndagebanga. Tensions developed between them. The appellant sent filed a claim against Mr.Majaliwa but later, on the advised of the ward tribunal, substituted his name with that of the respondent. The case was numbered as Land dispute No. 14/2019. He. He claimed trespass to his land which he claimed back. The case was dismissed. Further appeal to the District Land

and Housing Tribunal (the DLHT) in Land Appeal No. 141/2020 could not be successful, hence this appeal.

The appeal is on a narrow point that, the lower tribunals erred in entertaining the dispute without involving the buyer, Mr. Majaliwa Ndagebanga.

Submitting before the court, the appellant told the court that the respondent sold his land to Mr. Majaliwa but in the course of doing so, he cut a piece of his land which has a width of one (1) meter on the road side but three (3) meters on the rear side. It runs for 100 meters. He said that efforts to join Mr. Majaliwa in the case at the ward tribunal could not be successful. He thinks that it was not correct to decide the case without Mr. Majaliwa. Submitting in reply, the respondent admitted that he cut part of his land and sold it to Mr. Majaliwa in 2019. He denied to sell the appellant's land. He said that his land was 40 x 100 meters adding that he cut a piece of land measuring 20 x 50 meters and sold it to Mr. Majaliwa. He agreed that the appellant sought to join Mr. Majaliwa at the ward tribunal without success. He could not see the reason why Mr. Majaliwa should be joined. He also said that this appeal was filed out of time. The appellant made a rejoinder and reiterated his earlier position.



As hinted above, this appeal is on a narrow point, whether it was correct on the part of the lower tribunals to allow the case to be conducted without the buyer of the suit land. The concept of necessary party is reflected in our Civil Procedure Code Act, cap 33 R.E.2019 which has its genesis in the Indian Code of Civil Procedure. Interpreting the Indian Code of Civil Procedure which has similar provisions like our code, the full bench of the High Court of Allahabad laid down two tests for determining the questions whether a particular party is a necessary party to the proceedings or not in **Benares Bank Ltd. v. Bhagwandas**, A.I.R. (1947) All 18. The court said thus:

"First, there has to be a right of relief against such a party in respect of the matters involved in the suit and; second, the court must not be in a position to pass an effective decree in the absence of such a party."

The foregoing benchmarks were described as true tests by Supreme Court of India in the case of **Deputy Comr., Hardoi v. Rama Krishna**, A.I.R. (1953) S.C. 521. They were followed by the Court of Appeal in **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman**, (CAT), Civil Revision No.6 of 2017. Pages 25-26. See also **Stanslaus Kalokola v. Tanzania Building Agency and Another**, (CAT), Civil Appeal No. 45 of 2018 pages 11-12 where it was said thus:

*"... the law on the issue is settled, and we think Order 1 of the CPC is the controlling provision. Rule 3 of that order sets the general principle as regards joinder of defendants, that is, **the plaintiff must join persons against whom the right to relief arising from the same transaction exists.**"*

Further assistance may also be obtained in **Tang Gas Distributors Limited v. Mohamed Salim Said and 2 Others**, Civil Application for Revision No. 68 of 2011 where it was said as under.

*"... it is now an accepted principle of law (see Mulla Treatise (supra) at p. 810) that **it is a material irregularity for a court to decide a case in the absence of a necessary party. Failure to join a necessary party therefore is fatal** (MULLA at p 1020)"*

It is agreed that the respondent cut a piece of land between him and the appellant measuring 20 x 50 meters, which includes the suit land, and sold it to Mr. Majaliwa. The parties are quarrelling over the control and possession of land which is now under the hands of a third party, Mr. Majaliwa, who is not in court. I think that so long as it is agreed that the respondent is no longer the owner of the suit land which he has sold to Mr. Majaliwa who is now in physical possession of it, it was not correct to conduct the case in the

absence of Mr. Majaliwa. Any decision passed in the case will affect Mr. Majaliwa more than anybody else making him the necessary party in line with the principles shown above. Failure to join a necessary party is fatal making the proceedings and the decisions of the lower court bad in law.

In view of what has been said, the decisions of the lower tribunals are found to be illegal, vacated and set aside. Any interested party is advised to file his case afresh at the DLHT following the procedure outlined under the **Written Laws (Miscellaneous Amendments) (No.3) Act No.5 of 2021** which has amended the Land Disputes Courts Act, cap 216 R.E. 2019 and put the ward tribunals in a position of mediation only. The appeal is allowed with costs. It is ordered so.




L.M. Mlacha

Judge

21/4/2023

Court: Judgment delivered. Right of Appeal Explained.




L.M. Mlacha

Judge

21/4/2023

