

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

**LAND REVISION No. 3 OF 2023**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma  
in Misc. Land Application No. 152 of 2022 & Misc. Land Application for  
Execution No. 1011/2021; originating from Buswahili Ward Tribunal in  
Land Application No. 77 of 2021)*

**SIRASI WAMBURA CHACHA MTOKI ..... APPLICANT**

*Versus*

**1. JULIUS WAMBURA NYIGESA**  
**2. MWITA CHACHA NYIGESA ..... RESPONDENTS**

**RULING**

**Mtulya, J.:**

**02.06.2023 & 02.06.2023**

On 31<sup>st</sup> December 2002, **Mr. Chacha Nyigesa** (the deceased) had expired leaving behind a bunch of properties, including a land located within Baranga Village at Buswahili Ward in Kiagata Division of Butiama District, Mara Region. The land is sized two (2) acres and is estimated to value a Tanzania Shillings Forty Million (40). The neighbors who are demarcating the land are, namely: Sirasi Wambura Chacha Mtoki (the applicant) in the Western; Kyogera Mgosi in the Eastern part; Silas Wambura in the Southern; part and Sila Wambura in the Northern part (the land in dispute).

The land in dispute remained uncontested from 31<sup>st</sup> December 2002, when the deceased expired, to 16<sup>th</sup> April 2021, when **Mr. Julius Wambura Nyigesa** (the first respondent) approached **Buswahili Ward Tribunal** (the ward tribunal) and filed **Land Dispute No. 77 of 2021** (the dispute) against **Mwita Chacha Nyigesa** (the second respondent).

The complaint of the first respondent against the second respondent is displayed at the first page of the proceedings of the ward tribunal conducted on 23<sup>rd</sup> April 2021, that:

*Nakumbuka mnamo mwezi 8/2020 niliweza kupigiwa simu na kijana wa marehemu Chacha Nyigesa aitwae Nyigesa kuwa kuna mtu analima kwenye eneo letu ambalo ni la Baba, na kumtaja kwa jina anaitwa Silas [Sirasi] Chacha Mtoki.*

However, the first respondent had declined to sue the applicant. He moved on and sued the second respondent. There were no reasons in the record to show why the second respondent had declined to prosecute the applicant. After registration of all relevant materials, the ward tribunal resolved in favor of a third party called *Familia ya Chacha Nyigesa* (the

deceased's family). The reasoning in deciding for the deceased's family, the ward tribunal, at page 4 of the decision, stated that:

*Kwa maelezo hayo Baraza la Kata Buswahili  
limeridhika kabisa na maelezo na vielezo na  
ushahidi wa Julius Wambura Nyigesa kwa ardhi  
ambayo ina mgogoro ni mali ya familia ya Chacha  
Nyigesa kuanzia sasa.*

The ward tribunal had decided to grant the land in dispute to the third party, which was not in dispute and declared so from the date of the decision. Following the decision of the ward tribunal, the first respondent approached the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) and lodged an application for execution of the decision of the ward tribunal in **Misc. Land Application No. 1011 of 2021** (the application for execution). The tribunal after full hearing of the parties, it had decided in favor of the first respondent. The holding of the district tribunal is displayed at page 3 of the Ruling, that:

*Baraza hili linaamuru kwamba eneo lenye mgogoro  
likabidhiwe kwa Mleta Maombi Wambura Nyigesa*

*akiwa ni msimamizi wa Mirathi ya Marehemu  
Chacha Nyigesa.*

Whereas the reasoning of the tribunal was recorded at page  
2 of the Ruling, that:

*...hakuna ubishi kwamba Mleta maombi Julius  
Wambura Nyigesa ndiye aliyeshinda kesi dhidi ya  
Mjibu Maombi Mwita Chacha Nyigesa katika Baraza  
la Awali...Kwamba Baraza la Kata lilirejesha ardhi  
hii yenye mgogoro kwa Familia ya Chacha Nyigesa.*

Before arriving at the decision learned counsel for the second respondent had registered two (2) points of objection in the application for execution, namely: first, the disputed land was under occupation of the applicant; and second, the first respondent did not state as an administrator of the deceased's estates in the ward tribunal during the hearing of the dispute. However, the protests were declined by the district tribunal for want of merit.

The application for execution was granted and the first respondent was ordered to proceed with the execution of the decision of the ward tribunal, which prompted the applicant on the existence of the two (2) decisions of the ward and district

tribunals. Following awareness of the existence of the dispute and application for execution, the applicant had approached the district tribunal and lodged **Misc. Land Application No 152 of 2022** (the objection proceedings) to protest the execution, but his prayers were declined for lack of good reasons hence applied for **Land Revision No. 3 of 2023** (the revision) praying for this court to call and examine the record of all case files in the lower tribunals and give appropriate direction of all the disputes.

In this court, the applicant had invited the legal services of **Mr. Emmanuel Gervas**, learned counsel, to ask for replies of three (3) pertinent questions, *viz.* first, whether the first respondent was administrator of the deceased's estates; second, whether the ward tribunal was correct to grant land to a third person, who was not part to the dispute; and finally, whether the district tribunal is allowed in law to produce distinct order of the execution to that granted by the ward tribunal.

In explaining the first issue, Mr. Gervas contended that the proceedings of the trial tribunal do not display the second respondent as an administrator of the deceased's estates and did not prosecute the dispute in the ward tribunal as administrator of the deceased's estates. On the second complaint, Mr. Gervas

submitted that the parties in the tribunal were the first and second respondents, but the tribunal awarded land to the third person called *Familia ya Chacha Nyigesa*, which was not party in the contest. In his opinion, the scenario has brought into question two matters: first, the word *Familia* in Swahili comprises a group of several individuals, but the record does not list them; and second, the ward tribunal held that property belongs to the *Familia ya Chacha Nyigesa* as a family members and not *Chacha Nyigesa* as an individual person.

In the final complaint, Mr. Gervas contended that the ward tribunal decided in favor of *Familia ya Chacha Nyigesa*, but the district tribunal changed the words *Familia ya Chacha Nyigesa* to another person called *Julius Wambura Nyigesa* and ordered execution in his favor contrary to the law. In his opinion this court may invoke its revisionary powers enacted under section 43 (1) (b) of the **Land Disputes Courts Act** [Cap 216 R.E. 20019] (the Act) to revise the proceedings and order appropriate steps as there are errors material to the merit of the disputes, which had caused injustice to the parties.

Responding the three (3) indicated complaints, the first respondent submitted that he had tendered all evidences and

important materials at the ward tribunal to show that he is the administrator of the deceased's estates. According to him he was directed by **Kiagata Primary Court** (the primary court) in **Criminal Case No. 132 of 2020** (the case) between him and the applicant, to follow all legal steps to be appointed as administrator of the deceased's estates and complied with the directives and finally he was granted the letters of administration of the deceased's estates at the primary court.

Regarding the list of the deceased's family members, the first respondent submitted that three (3) windows of the deceased and two (2) brothers of the second respondent came during the hearing of the dispute at the ward tribunal and had testified against the second respondent. In his opinion, the presence of the widows of the deceased and brothers of the second respondent is a proof and consent of the *Familia ya Chacha Nyigesa* hence the questions of discrepancies in the names are just legal jargons that may be declined by this court.

On the other hand, the second respondent supported the move preferred by Mr. Gervas and submitted that *Familia ya Chacha Nyigesa* was not party of the contest in the ward tribunal hence granting ownership of the disputed land to the family

members was illegal. Regarding letters of administration of the deceased's estates, the second respondent submitted that the first respondent was not granted letters of administration of the deceased's estates and does not belong to the *Familia ya Chacha Nyigesa*. Finally, the second respondent supported existence of two (2) distinct orders of the lower tribunal and stated that the order which issued by the ward tribunal is distinct to that issued by the district tribunal.

I have glanced the record of the present appeal and found that it is the applicant who alleged ownership of the disputed land arguing that he bought the same from the second respondent. Record shows that the first respondent was informed by the son of the deceased called Nyigesa on the presence of the applicant in the disputed land, but the first respondent had declined to sue him or together with the second respondent. The record shows that the first respondent had prosecuted the applicant in criminal case at the primary court for criminal trespass unsuccessfully. The facts in the present case show that the first respondent was very much aware of the presence and occupation of the applicant in the disputed land.



As indicated earlier in this judgment, the applicant was brought into display of the dispute and execution proceedings during the execution stage. In order to protest the execution, the applicant had applied for objection proceedings in the tribunal, but his prayers and treasons of protest were declined.

I further perused the record and found the decision of the ward tribunal granted ownership of the disputed land to *Familia ya Chacha Nyigesa*, which was not party to the proceedings in the ward tribunal and it is not reflected anywhere in the record of appeal. Even the current occupier of the disputed land was not invited in the ward tribunal to register relevant materials in the dispute for justice to be seen to be done. This is obvious breach of the law on the right to be heard, which in many occasions this court has said it cannot be easily ruptured (see: **Ginai Bangiri v. Kisigiri Warioba & Another**, Land Appeal No. 63 of 2022).

Justice in courts of law and land tribunals is arrived when there is fair trial to all parties with interest in disputed lands. Fair trial means all contesting parties are treated equally during court's proceedings. According to the Court of Appeal (the Court) equality before the law and courts is part of the right to be heard

(see: **Oysterbay Villas Limited v. Kinondoni Municipal Council & Another**, Civil Appeal No. 110 of 2019).

The right to be heard is a natural justice and currently moved to constitutional right enacted under section 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2019]. The right is now elevated to the level of human right by the Court in a barrage of precedents (see: **Judge In-Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44; **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251; **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018).

It is unfortunate that the present record lacks list of persons in the *Familia ya Chacha Nyigena*. It is also difficult in law to say *Familia ya Chacha Nyigena* is similar or equivalent to the name *Julius Wambura Nyigesa* or *Chacha Nyigesa*. These are three (3) distinct names, and any change of the names would have been proper to be authorized by the court of law. It is unfortunate that the proceedings of the tribunal are silent on whether the first respondent approached the tribunal as the administrator of the deceased's properties or as an individual person.

The first respondent had testified during the hearing of the dispute at the ward tribunal that, he was told by Nyigesa that: *kuna mtu analima kwenye eneo letu ambalo ni la Baba*. The word *Baba* or name of the Baba has received silent reply in the record. Today in this court, during hearing of the application, the second respondent submitted that the first respondent does not belong to their family, *Familia ya Chacha Nyigesa*. The second respondent submitted further that the first respondent does not have letters of administration of the deceased's estates.

Additionally, there is legal faults in the orders by the two lower tribunals. The award found at the ward tribunal was decided in favor of *Familia ya Chacha Nyigesa* whereas the district tribunal ordered in favor of the first respondent. It is unfortunate that the district tribunal had remained mute on the proceedings on the alteration of the names. However, at page 2 of the ruling, the district tribunal thought that: *hakuna ubishi mleta maombi Julius Wambura Nyigesa ndiye aliyeshinda kesi dhidi ya Mjibu Maombi Mwita Chacha Nyigesa katika Baraza la awali*.

Nevertheless, the record is silent on the cited declaration from the ward tribunal. In absence of the record in proceedings

on letters or letter of administration, it is difficult to hold that the first respondent is an administrator of the deceased's estates (see: **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021 and **Nathaniel Waluse Nyabange v. M/S J.C. Igogo Enterprises (1992) T. Ltd & Seven Others**, Land Case No. 26 of 2022).

In totally of evidence and circumstances of this dispute, it would be of interest of justice to invoke section 43 (1) (b) of the Act and move on to set aside all proceedings and quash judgments and subsequent orders issued by the lower tribunals for want of proper application of the law. This is a court of law and justice entrusted with additional powers of ensuring proper application of the laws by the courts and tribunals below. It cannot justifiably close its eyes when there is vivid illegality on the record.

Regarding the way forward in this application, it is obvious that the dispute involves clan/family members who can sit and resolve their differences amicably at clan/family level without any quarrels. If amicable settlement of the dispute is tough, the parties may prefer fresh and proper suit in accordance to the current laws regulating land disputes. I order no costs as the

dispute was initiated by lay person from the same clan of the deceased, and in any case the error was graced by lower tribunals.

It is so ordered.



A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the left.

F. H. Mtulya

**Judge**

02.06.2023

This Ruling was pronounced in Chambers under the Seal of this court in the presence of all the parties, **Mr. Sirasi Wambura Chacha Mtoki, Mr. Julius Wambura Nyigesa and Mr. Mwita Chacha Nyigesa.**

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the left.

F. H. Mtulya

**Judge**

02.06.2023