

**IN THE HIGH COURT OF TANZANIA  
(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**LAND APPEAL NO. 63 OF 2022**

*(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Appeal No. 74 of 2022 Delivered on the 10<sup>th</sup> May, 2022)*

**PATRICK BARNABA SHIDATU .....APPELLANT**

**VERSUS**

**MUAMINI SAMSONI ..... RESPONDENT**

**JUDGMENT**

31<sup>st</sup> May, 2023

**CHABA, J.**

This is a second appeal in which the appellant again is attempting to reverse the decision of Mvuha Ward Tribunal, where the respondent herein was declared as the rightful owner of the suit land which is located in Changalawe Village at Mvuha, in Morogoro Rural District. As background, at Mvuha Ward Tribunal, the respondent sued the appellant claiming that, the appellant, had maliciously trespassed in her suit land (disputed land) and removed all the beacons and destroyed permanent crops.

To prove her ownership over the alleged disputed land before Mvuha Ward Tribunal, the respondent herein tendered the sale agreement dated 11<sup>th</sup> April, 2017 which was admitted in evidence. In addition, the respondent who was the applicant in the Ward Tribunal summoned three witnesses namely,

Mohamedi Mwamba, Bakari Omali Binda and Kaisa Nikodem who supported her evidence that she is a lawful owner of the disputed land which she bought it from Tatu Kikopa on 11<sup>th</sup> April, 2017 for the price of TZS. 400,000/=.

During the defence hearing, the appellant herein alleged that he acquired the disputed land on 18<sup>th</sup> September, 2020 after he had bought it from Tatu Hassani Kikopa for the price of TZS. 700,000/=. He tendered in evidence, the so called sale agreement and it was admitted in evidence as an exhibit. The appellants' version was supported by the evidence of Mohamed Ali Mkumba and Tausi Hassani Kikopa. They testified that, they witnessed the sale of agreement between the appellant and Tatu Kikopa. Having considered the evidence adduced before it, the trial Ward Tribunal decided the case in favour of the respondent, and declared her as the rightful owner of the suit land.

However, the appellant was dissatisfied with the decision of Mvuha Ward Tribunal, and therefore, he appealed to the District Land and Housing Tribunal for Morogoro, at Morogoro in which the said tribunal sitting on its first appellate capacity dismissed the appeal for lack of merits, hence the present appeal. The appellant has presented one ground of appeal to challenge the decision of the first appellate tribunal as hereunder: -

1. That, the District Land and Housing Tribunal for Morogoro, at Morogoro erred in law and facts by upholding the decision of the trial ward tribunal without considering non-joinder of the necessary part which rendered the proceeding to be fatal.



When the application was called on for hearing on the 4<sup>th</sup> October, 2022, parties appeared in Court through their learned advocates. While the appellant enjoyed the legal services of Mr. Niragila Deo, the respondent enlisted the legal services of Mr. Bahati Hacks. Thus, with the parties' consensus, it was agreed that the appeal be disposed of by way of written submissions. Both parties complied with the scheduled orders.

Submitting in support of ground of appeal which was premised on a point of non-joinder of a necessary party, the counsel for the appellant argued that it was very crucial for Tatu Kikopa who sold the parcel of land to the respondent to be joined as part of this case, because she is the one who sold the disputed land to the parties herein. He averred that, failure to join the vendor as a necessary party, resulted to a defective decision. The counsel for the appellant fortified his argument by citing the case of **Juma B. Kadala Vs. Laurent Mkande 19983 TLR 1983 103**, where this Court held inter-alia that: -

"...(iii), in a suit for recovery of land sold to a third party, the buyer should be joined with the seller as a necessary party defendant non-joinder will be fatal to the proceedings....".

From the above quoted decision, the counsel stressed that, since non-joinder of a party is fatal to the proceedings, this implies that the first appellate tribunal in Land Appeal No. 74 of 2022 lodged by the appellant was supposed to declare the decision of the trial ward tribunal fatally defective for non-joinder of Tatu



Kikopa. According to him, the first appellate tribunal seriously erred in law upon upholding the trial ward tribunal decision. He insisted that, non-joinder of a necessary party renders judgment and proceedings null and void, citing the case of **Godfrey Kuzungala Vs. Abdulraham Peter Shangashi**, Land Appeal No. 120 of 2019, where it was held that: -

"..... where the non- joinder is of a necessary party, the position of law is such the judgement and proceeding thereof become null and void. the rationale being that in the absence of the necessary party in the proceedings no decree capable of being executed can be issued.....".

He went on submitting that, similar position was taken and cemented by the Court of Appeal of Tanzania sitting at Dodoma in the cases of **Juliana Francis Nkwabi Vs. Lawrent Chimwaga**, Civil Appeal No. 531 of 2020, and **Christina Jalson Mwamlima and Another Vs. Henry Jalson Mwamlima and Six Others**, Land Case No. 19 of 2017 wherein it insisted joinder of a necessary party to a case and the fatality of a non-joinder of a necessary party.

He concluded that, the first appellate tribunal erred in upholding the decision of Mvuha Ward Tribunal without considering the fact that a necessary party was not joined as a party to this case. He lastly prayed for the court to allow this appeal.



In reply, Mr. Bahati Hacks, learned counsel for the respondent opposed the appellant's submission and accentuated that, all cases cited by the counsel for the appellant are all distinguishable. To reinforce his contention, the counsel cited the case of **Abdi M. Kipoto Vs. Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017, where the CAT at page 12 stated that: -

".....What we can discern from the above is that non-joinder of a party does not defeat the proceedings of a suit as long as the dispute between the parties to the suit can be resolved without that party and without affecting that party's interests..."

He continued to argue that, the appellant didn't show anywhere or anyhow on whether Tatu Kipoka had any personal interest in the matter under consideration which called for the necessity for her to be joined as a part to this case so that could defend her interest. He further argued that, since it was the appellant who instituted the matter at the trial ward tribunal, then he was (is) the one who choose whom to sue, and it was the duty of the applicant/ plaintiff to choose whom to sue as it was expounded by this Court in the case **Jamal Mustafa and Others Vs. Kinyata Tindamanyile and Another**, Appeal Case No. 58 of 2019 and the similar position was held in the case of **Eliya Mnyago Vs. Selestine Biitamaka**, Land Appeal No. 55 of 2015. He therefore, prayed this court to dismiss this appeal with costs.

Having considered the rival submissions by the parties and upon going through the records before this court, I find that the issue calling for



consideration and determination of this appeal is, whether the instant appeal has merit or not.

As gleaned from the parties' pleadings, the only issue that has crop-up and termed as ground of appeal raised by the appellant, is whether non-joinder of a necessary party is fatal. To answer the above question, I find it appropriate to revisit the Civil Procedure Code [CAP. 33 R. E, 2019], in particular Order, 1 Rule 3, where the Code provides as to who can be joined as defendants. It read:

".... All persons may be joined as defendants against whom any right to relief in respect of arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in alternative where, if separate suits were brought against such persons, any common question of law or facts would arise...."

From the above cited provision of the law, it is clear that for a person(s) to be joined as defendant(s), the plaintiff must have a right to relief against both of them and, in its absence, will render the delivered decree not executable. The law recognises two kinds of parties among those who can be joined in one suit that is necessary party and non-necessary party. Non-necessary party is a person who has merely to be joined in the suit, in other words, known as proper party. Necessary party is a person who has to be joined in the suit but whose presence before the court is necessary for it to effectively and completely



adjudicate the suit. In the case of **Abdi M. Kipoto Vs. Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017 (unreported), the CAT stated that: -

"A party becomes necessary to the suit if its determination cannot be made without affecting the interests of that necessary party".

The CAT was of the view that: -

"The determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination, according to the decision in the above-cited case, include the particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed." I understand that, Order 1 Rule 9 and 13 of the Civil Procedure Code Cap. 33 [R. E, 2019] provides for a general rule that nonjoinder of parties is not fatal. However, it is fatal when the nonjoinder party is a necessary party to the case like the situation at hand".

Again, in **Christina Jalison Mwamlima and Another** (supra) this Court laid two tests which have been set by the Court for determining whether or not a particular person is a necessary party (as defendant) as hereunder: -



1. There has to be a right or relief against such a party in respect of the matters involved in the suit, and
2. The Court must not be in a position to pass an effective decree in absence of such a party.

Having considered who is the necessary party in law and the rationale for joining him in a suit, and upon considering the ground of appeal posed by the appellant, and further upon scrutiny of the records of the trial ward tribunal, it is apparent that, the respondent herein sued the appellant before the trial ward tribunal at Mvuha claiming that the appellant had trespassed in her parcel of land and removed the beacons in the said parcel of land. Again, as garnered from the record of the trial ward tribunal, both the appellant and the respondent bought the land in dispute at different times from the vendor one Tatu Kikopa. Whereas the respondent / applicant at trial bought the land in dispute from Tatu Kikopa on 11<sup>th</sup> April, 2017 for TZS. 400,000/=, on the other hand, the appellant / respondent at trial bought the same from similar person on 18<sup>th</sup> September, 2020 for TZS. 700,000/=.

In my settled view, the vendor Tatu Kikopa was not a necessary party who ought to have been joined in the instant proceedings, this is because, in the circumstance of this case, there is no any right or relief which is so connected to the alleged vendor one Tatu Kikopa in respect of the disputed parcel of land. As hinted above, the evidence shows that both parties bought the land in dispute in different period of time.



From the foregoing discussion, it is my considered opinion that, upon making the determination of the second point in this case, the decree or judgement passed by the trial ward tribunal can be effectively executed in absence of Tatu Kikopa, the seller in this matter. If the appellant had or has any claim(s) against Tatu Kikopa, the only available avenue for him to deal with the seller would have been to open or file a new or fresh case against her and not to join her in this case as a necessary party.

I have also considered the arguments by the learned counsel for the respondent that, the appellant has failed to show anywhere or anyhow as to whether the said Tatu Kikopa had any personal interest over the matter at hand and how the court's decision would have affected her. In this regard, I am satisfied that, the first appellate tribunal reached to a fair and just decision as it was underscored by the CAT in the case of **Abdi M. Kipoto** (supra).

In the upshot and for the reasons stated above, the ground of appeal fronted by the appellant is non-meritorious. Consequently, I hereby dismiss this appeal with costs. Hence, the decisions of the lower tribunals are hereby sustained. I so order.

**DATED at MOROGORO** this 31<sup>st</sup> day of May, 2023.

  
M. J. CHABA

**JUGDE**

**31/05/2023**

