

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MANYARA  
AT BABATI  
LAND REVISION NO. 3 OF 2023**

*(Arising from the decision of the District Land and Housing Tribunal for Manyara at Babati in Land Application No. 19 of 2016)*

**GABRIEL ANDREW MICHAEL .....APPLICANT**

**VERSUS**

**DAMIANO AMA.....1<sup>ST</sup> RESPONDENT**

**GURUMBE AXWESSO** *(Administrator of the Estate*

*of the late Qamara Ami Qalago)* .....2<sup>ND</sup> RESPONDENT

**RULING**

*7<sup>th</sup> & 28<sup>th</sup> June, 2023*

***Kahyoza, J.:***

**Gabriel Andrew Michael** applied to this Court contending that he has interest in the land litigated in a suit which was between **Damiano Ama** and the late **Qamara Ami**. The late **Qamara Ami** is represented by **Qalago Gurumbe Axwesso** *(Administrator of the Estate of the late Qamara Ami Qalago)* in the present application. In the suit under review, **Damiano Ama** sued **Qamara Ami Qalago** successfully before the district land and housing tribunal (the tribunal) for declaration that he was the owner of the suit land. **Gabriel Andrew Michael** contends that he has

interest in contested land between **Damiano Ama** and **Qamara Ami Qalago**, and he was not heard, hence the current application.

The application was supported by **Gabriel Andrew Michael's** affidavit. He deposed in the affidavit that he was the owner of the disputed land measuring 4.2 acres. He alleged that he bought the disputed land from **Qamara Ami Qalago** alias **Qamara Ammi** in the year 2016. He contended that Application No. 19/2016 and Miscellaneous Application 82/2019 between **Damiano Ama** and **Qamara Ami Qalago** proceeded without his knowledge. He prayed for an order to quash the proceedings, judgment and decree of the tribunal.

The respondents filed affidavits. **Damiano Ama**, the first respondent, filed his affidavit where he vehemently opposed the application. He averred that **Gabriel Andrew Michael**, the applicant has no interest in the disputed land. He deposed that he was the owner of the suit land, which he bought in 2006 from the late **Qamara Ami**. He added that the late **Qamara Ami's** wife witnessed the sale agreement. He attached a copy of the alleged sale agreement. The second respondent, **Gurumbe Axwesso**, the administrator of the late **Qamara Ami's** estate filed an affidavit which he titled Counter affidavit but it was an affidavit in support of an application and not a counter

affidavit. I was inclined to call it an affidavit in support of an application, as the second respondent admitted all facts alleged in the applicant's affidavit.

**Did the applicant have interest to defend in the suit land?**

The background of the matter is that; the late **Qamara Ami** sold a piece of land to **Damiano Ama**, measuring 17 acres as per the contract in 2006. **Damiano Ama**, took possession of the land. Later in 2014, the late **Qamara Ami**, without colour of right, took possession of 5 acres of land, which is referred to as the land in dispute. **Damiano Ama** sued the late **Qamara Ami**, for trespass. **Damiano Ama** won the day as the tribunal declared him the lawful owner of the disputed land in 2018.

According to **Damiano Ama's** submission, of which is not evidence, **Gabriel Andrew Michael**, who was employed by **Qamara Ami**, applied for extension time to institute revision proceedings. **Gabriel Andrew Michael** alleged that he had interest in the land as he bought it from **Qamara Ami** in 2016.

The issue is whether **Gabriel Andrew Michael** demonstrated that he had interest in the disputed land worthy to be given the right be heard. It is settled that, the right of a party to be heard before adverse action or decision is taken against such party has been stated and a decision which is arrived at in violation of it will be nullified. See the case of **Abbas Sherally and**

**Another v. Abdul Fazalboy**, Civil Application No. 33 of 2002 (unreported)

the Court of Appeal emphasized the importance of the right to be heard as follows-

*"The right of a party to be heard before adverse action or decision is taken against such party has been stated and emphasized by the courts in numerous decisions. **That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice.**" (Emphasis added)*

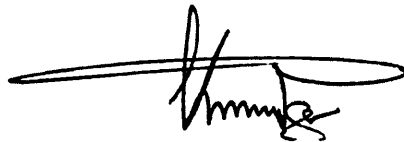
It is on record that **Qamara Ami** sold a piece of land to **Damiano Ama**. After eight (8) years passed from the date of sale, **Qamara Ami**, occupied the part of the land he had sold to **Damiano Ama**. It is the land **Qamara Ami** re-occupied which is subject of dispute. **Damiano Ama** sued **Qamara Ami** before the tribunal in 2016. It is during the pendency of the case between **Damiano Ama** and **Qamara Ami** before the tribunal, when it is alleged **Qamara Ami** sold to **Gabriel Andrew Michael** the disputed land. **Damiano Ama** disputes vehemently and rightly so, the authenticity of the sale agreement between **Qamara Ami** and **Gabriel Andrew Michael**. It is highly cynical whether **Qamara Ami** had any legal title to pass to **Gabriel Andrew Michael** and whether he passed title when there was already a dispute before the tribunal over the matter subject of sale agreement. No doubt, those issues can be answered after hearing the

parties. It is not a duty of this Court at this stage to determine the merit of the applicant's case but my task is to find out whether **Gabriel Andrew Michael** had in the rest in the suit land worthy to defend. I am of the firm view that the applicant has demonstrated that he has interest in the disputed and that his right has been affected by the decision of the tribunal in a suit between **Damiano Ama** and **Qamara Ami**.

In the end, I, pursuant to section 43(2) of the Land Courts Act, Cap.216 R.E. 2019, quash the proceedings and set aside the judgment of the District Land and housing tribunal. I, further, **remit application No. 19/2016** back to the tribunal to be heard afresh by another Chairman with new set of assessors. Should the respondent emerge successfully, he will be entitled to costs before this Court. In the event, the respondent loses the case, each party to bear its own costs.

It is ordered accordingly.

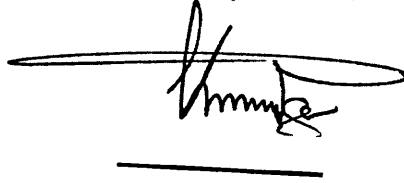
**Dated at Babati** this 28<sup>th</sup> day of June, 2023.



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**John R. Kahyoza,**  
**Judge**

**Court:** Judgment delivered in virtual presence of the appellant and respondent in person. B/C Ms. Fatina present.

A handwritten signature in black ink, appearing to read 'John R. Kahyoza', is written over a horizontal line. The signature is stylized and cursive.

**John R. Kahyoza,**

**Judge**

**28/6/2023**