

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MANYARA  
AT BABATI**

**LAND APPEAL NO. 3 OF 2023**

*(Originating from the decision of the District Land and Housing Tribunal for Babati at Babati in Land Application No. 8 of 2022)*

**LUSILA KWAANG PARESO.....APPELLANT  
VERSUS  
CATHERINE BURA INGI .....RESPONDENT**

**RULING**

*21<sup>st</sup> June & 6<sup>th</sup> July, 2023*

***Kahyoza, J.***

**Catherine Bura Ingi** sued **Lusila Kwaang Pareso** successfully for declaration that she was a rightful owner of the suit land before the District Land Housing Tribunal (DHLT). Aggrieved, **Lusila Kwaang Pareso** filed an appeal raising five grounds of appeal.

**Lusila Kwaang Pareso's** grounds of appeal raised five issues as follows-

1. did the tribunal fail to analyze evidence leading to unjust decision?
2. did the tribunal fail to take judicial notice of Civil Appeal No. 11/2020 and Appeal No. 9/2019?
3. was the tribunal justified to declare **Catherine Bura Ingi** the lawful owner of the suit land?

4. did the tribunal err not to consider the evidence of Stephano Daniel (**Rw5**) and to order him to produce the register?

It is vital to give a background of this matter as follows; **Lusila Kwaang Pareso** is **Catherine Bura Ingi's** sister in-law. **Lusila Kwaang Pareso** was married to **Catherine Bura Ingi's** late brother. **Catherine Bura Ingi's** brother who is Lusila's husband died intestate in 2017. He was survived by **Lusila Kwaang Pareso**, his wife and several children. Unfortunately, before **Lusila Kwaang Pareso's** husband met his demise, her mother in-law, Anno Damo passed away. She died intestate.

Joseph Bura applied to administer the estate of late Anno Damo, her mother and **Lusila Kwaang Pareso's** mother in-law. On her part, **Lusila Kwaang Pareso** was appointed to administer her late husband's estate. Joseph Bura, the administrator of the late Anno Damo's and **Lusila Kwaang Pareso**, the late Samwel Bura's estate locked horns over the suit land. Joseph Bura alleged that the suit land belonged to his mother, the late Anno Damo while **Lusila Kwaang Pareso** claimed that it belonged to her husband, the late Samwel Bura. The ward tribunal decided in favour **Lusila Kwaang Pareso**. Joseph Bura appealed to the DLHT, which nullified the decision of the ward tribunal because the suit was instituted in Joseph Bura's and **Lusila Kwaang Pareso's** personal capacities and not as administrators

of the deceased's estate. Instead of either of the parties instituting another suit in the capacity as administrator of the late Anno Damo's estate or administratrix of the late Samwel Bura's estate, Joseph Bura and **Lusila Kwaang Pareso** listed the disputed land as a property of the deceased's estate and distributed it. Joseph Bura, the administrator of the late Anno Damo's estate distributed the disputed land to **Catherine Bura Ingi** whereas **Lusila Kwaang Pareso** administratrix of the late Samwel Bura's estate distributed the disputed land to her children.

**Catherine Bura Ingi** sued **Lusila Kwaang Pareso**, the administratrix of the late Samwel Bura's estate, for declaration that she was the rightful owner of the suit land. She won the day, thus, **Lusila Kwaang Pareso** instituted the current appeal.

Both **Catherine Bura Ingi** and **Lusila Kwaang Pareso**, had services of an advocate and the appeal proceeded by way of written submission. I refer to the submission while determining the issues raised by the appeal.

**Did the tribunal abandon to analyze evidence leading to unjust decision?**

The appellant complained that the tribunal failed to analyze and evaluate the evidence properly and reached the unjust decision. He

submitted that the duty to analyze and evaluate evidence was a crucial stage in the process of writing the judgment. He argued that failure to do so inevitably leads to wrong or biased conclusions or interferences resulting to miscarriages of justice. To support his contention, he cited the case of **Ismail Rashid vs Mariam Msati**, (Civil Appeal No. 75 of 2015) [2016] TZCA 786 (29 March 2016) where the Court of Appeal held that-

*"It is trite law that judgment of any court must be grounded on the evidence properly adduced during trial otherwise it is not a decision at all. As the decision of the High Court is grounded on improper evidence, such a decision is a nullity."*

He contended that the tribunal recorded the evidence of the appellant and respondent but only picked the evidence of Joseph Bura (**Pw5**) on how he dealt with the estate of the late Anna Basso and the end he stated that-

*"Pw5 Joseph Bura ametoa ushahidi namna alivyogawa mirathi ya marehemu Anna Basso na kwamba mpaka **mwisho hakupingwa**. Kuna ushahidi kuwa mjibu maombi alikuwa akishiriki yeye binafsi au watoto akiwemo Bonaventura Samwel Bura vikao vya mirathi ya Anna Basso na mwisho hata kielelezo cha mirathi fomu namba sita inaonyesh kwamba Bonaventura alipewa mali ya marehemu Anna Basso Asilimia sitini. Kwa hoja na ushahidi huo maombi haya yanakubaliwa. Mleta maombi ni mmiliki halali wa ardhi yenye mgogoro ya uakubwa wa eka moja."*

The appellant submitted further that, the decision was erroneous as the respondent's claim was for 1 1/4 acres and the chairman allowed 1.2 acres of land. He added that the chairman failed to analyze the evidence of Pw5 Joseph Bura, which was contradictory and fraudulent. He stated that Pw5 Joseph Bura deposed that he signed distribution of property on behalf of Boneventura Bura.

He added that the chairman failed to consider the evidence of DW1 who testified that her husband acquired the disputed land during operation vijiji which was supported by neighbours. He submitted that among the evidence given was that of Victoria Bura Ingi, daughter of Anna Basso, Dw3, Dw4 and DW7 which were vital evidence and which the tribunal did not evaluate.

**Catherine Bura Ingi** replied through her advocate that the chairman evaluated well the evidence of both parties on record and reached to a just decision. He stated that after the assessors gave opinion, the chairman considered the evidence. He stated that the chairman stated that-

*"Ninaheshimu sana maoni ya washauri hawa/ wajumbe wa baraza kakini nadhani kuna ushahidi wa msingi hawakuzingatia"*

He submitted that Pw5 Joseph Bura objected to the proceedings in Probate No. 1/2018 before the primary court which were initiated by the appellant. His objection was overruled. He appealed to the district of babati Civil appeal No. 11/2020 where the appeal was allowed and the matter ended. He stated that **Lusila Kwaang Pareso**, the appellant, did not challenge the judgment to the High Court or to the Land Tribunal. He

submitted that the appellant had a duty to sue the administrator and cited the case of **Said M. Mnyone v. Saum Nassor Mgonza** [2010] T.L.R. 366 where it was observed that-

*"There may be cases where the property of the deceased person may be in dispute. In such cases, all those interested in determination of the dispute or establish ownership may institute proceedings against the administrator or the administrator may sue to establish claim of the deceased property."*

He added that after the district court made a decision in civil Appeal No. 11/2020 which the appellant did not appeal against, the respondent opened Probate and Adm. Cause No. 2/2018 at Dareda primary court. The appellant objected that the disputed land was the property of her late husband Samwel Bura and not the property of Anna Basso. The primary court overruled the objection. He contended that after the primary court dismissed the objection, the appellant was required to file a suit in a court of competent jurisdiction to establish her claim and not otherwise.

He concluded that the chairman's evaluation of the evidence was enough to answer the issues raised. He cited the case of **Credo Siwale v R.**, which relied on the case of **Mbogo and Another v. Shah** (1968) E.A, to explain circumstances under which an appellate court may interfere with exercise of discretion of an inferior court or tribunal. He submitted that the interference could be in the following circumstances-

1. if the inferior court misdirected itself; or
2. if it acted on matter it should not have acted; or

3. it has failed to take into consideration matters which it should have taken in consideration, and in so doing arrived at a wrong conclusion.

He concluded that the appellant's advocate did not prove any of the above condition which may warrant this Court to interfere with the discretion of the tribunal. He closed his submission that the first ground of appeal was misconceived and lacked no merit.

In his rejoinder, the appellant's advocate submitted that after the death of Anna Basso and Samwel Bura, **Lusila Kwaang Pareso**, the appellant was the first to file Probate No. 1/2018. She listed all her husband's property including the suit land. Joseph Bura objected. The primary court overruled the objection and proceeded to appoint the appellant as the administratrix of the estate of Samwel Bura. Joseph Bura appealed to the district court vide Civil Appeal No. 11/2019. The district court partly allowed the appeal. The district court found that the issue of ownership must be determined by the court or the tribunal of competent jurisdiction. It ordered the primary court to consider and determine the issue whether to grant letters of administration of the estate of Samwel Bura. He concluded that it was Joseph Bura who was prejudiced by inclusion of the disputed property in the estate of Samwel Bura who was required to take action.

It is settled that the first appellate court has duty to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary. The Court of Appeal in **Future Century Ltd v. TANESCO**, Civil Appeal No. 5 of 2009 held that-

*"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision."*

Looking at the evidence and the judgment, it is clear that the tribunal did not consider and analyze all evidence. The tribunal gave weight the evidence of Joseph Bura (**Pw5**), the administrator of the estate of the late Anna Damo. The tribunal held that Joseph Bura (**Pw5**) distributed the disputed land to **Catherine Bura Ingi**. I find it proved that Joseph Bura (**Pw5**) distributed the suit land to **Catherine Bura Ingi**. The only dispute is whether the suit land was part of Anna Damo's estate. The record depicts that **Catherine Bura Ingi** summoned four witnesses, who testified that the disputed land was part of Anna Damo's estate.

Francis Leonce (**Pw2**), a chairman of Loto village from 2014, deposed that in 2017, the late Anna Basso told him that she was planning to give the disputed land to **Catherine Bura Ingi**. He added that unfortunately, Anna Basso died before she allocated the disputed land to **Catherine Bura Ingi**



as she had contemplated. He deposed further that after Anna Basso passed away, **Catherine Bura Ingi** cultivated the disputed land in 2018-2019. During cross-examination, Francis Leonce (**Pw2**) deposed that **Catherine Bura Ingi** had not cultivated the disputed land before Anna Basso's death.

Emmanuel Gasper Safari (**Pw3**) was another witness who deposed that the disputed land was the property of Anna Basso. He deposed that he was the chairman of the Seloto village before it became Loto in 1977-1987. he added that the disputed land was allocated during Ujamaa village to the late Anna Basso.

John Leonce (**Pw4**) deposed that he leased disputed land from Anna Basso and cultivated it in 2017-2018. The last was Joseph Bura (**Pw5**), the administrator of the estate of Anna Basso.

I considered the evidence of **Catherine Bura Ingi**, which shows that only Emmanuel Gasper Safari (**Pw3**) explained how the deceased Anna Basso obtained the disputed land. John Leonce (**Pw4**)'s evidence had no any weight as he had no evidence to prove that he leased the disputed land from the deceased in 2017 – 2018. He tendered a document to prove that he returned the land to Joseph Bura (**Pw5**).

I examined **Lusila Kwaang Pareso's** evidence, which showed that she summoned a total of six witnesses. Among **Lusila Kwaang Pareso's** witnesses was Victoria Burra Ingi (**Dw2**). Victoria Bura Ingi (**Dw2**) is a blood sister of **Catherine Bura Ingi** and Joseph Bura (**Pw5**). I find Victoria Burra Ingi (**Dw2**) a credible witness. She deposed that the disputed land belonged to his late brother Samwel Bura who obtained it in 1974. She deposed that her brother obtained the disputed land during Operation Vijiji. I find her credible witness as she testified that she stayed with her brother Joseph Bura (**Pw5**) but still she did not like to tell lies in favour of Joseph Bura (**Pw5**). She had no quarrels with Joseph Bura (**Pw5**) of her sister **Catherine Bura Ingi**.

Victoria Bura Ingi (**Dw2**) informed that tribunal that Samwel Bura was allocated 2 acres of land, however in 2009 there was a dispute between Samwel Bura and Merikuri Peter. Merikuri Peter won a case against Samwel Bura and took part of Samwel Bura's land. She deposed that Samwel Bura remained only with 1.5 acres of land.

Consolata Bura (**Dw3**) supported Victoria Bura Ingi (**Dw2**)'s evidence that the disputed land belonged to Samwel Bura and that it was located to him during Operation Vijiji. She deposed that their family was give land

during Operation Vijiji adjacent to Samwel Bura's land. Part of her testimony reads that-

*"Mwaka 1974 ilikuwa Operation Vijiji ya mashamba / vijiji- mimi na mume wangi Marin tulipewa shamba na jirani alipewa anaitwa Samwel Bura. Mwaka wa kupewa hati mimi na Samwel Bura tulienda semina ya kutolewa hati miliki kwa wiki moja"*

She averred that Samwel Bura got 2 acres during Operation Vijiji and that he lost 0.5 acre through a dispute against Merkior. Consolata Bura (**Dw3**) was another credible witness, to my opinion. She was 75 years old woman and a neighbor to the suit land. Her evidence would not be thrown in the ditch without providing reason for doing so. Albanus Thomas (**Dw4**) gave evidence that in 2011 he went together with Joseph Bura (**Pw5**) and the late Samwel Bura to register their land and that they all got registration number of their respective land. Samwel Bura got the registration number of the suit land.

Stephano Daniel (**Dw5**), the hamlet chairman of Ndege hamlet gave evidence to support the evidence of Albanus Thomas (**Dw4**) that in 2014 he was handed over documents including a register showing that the disputed land was the property of the late Samwel Bura. During the cross-examination

he deposed that the registration number in the register showed that the suit land belonged to Samwel Bura.

**Lusila Kwaang Pareso**, the late Samwel Bura's wife deposed that the disputed land belonged to her husband. He deposed that Samwel Bura married her in 1987. She tendered a receipt in her husband's name for land rent paid for year 2001-2002. The tribunal received the receipt and marked exhibit R1.

Having considered the evidence of both sides as shown above, I am of the firm view that the evidence of **Lusila Kwaang Pareso**, the late Samwel Bura's wife was heavier than that of **Catherine Bura Ingi**. I found also that **Lusila Kwaang Pareso's** witnesses were more credible than **Catherine Bura Ingi's** witnesses. Among **Lusila Kwaang Pareso's** witnesses was Victoria Burra Ingi (**Dw2**). As I said earlier, Victoria Burra Ingi (**Dw2**) is **Catherine Bura Ingi's** blood sister who testified in favour of **Lusila Kwaang Pareso** that the disputed land belonged to the late Samwel Bura. Victoria Burra Ingi (**Dw2**) denied **Catherine Bura Ingi's** allegation that the disputed land belonged to their late mother Anna Basso. I found the evidence that in 2001 -2002 Samwel Bura paid land rent for the disputed land adding weight to the contention that the suit land was his property.

There is yet another piece of evidence that when the late Samwel Bura had a dispute land between him and Merkior, the late Anna Bosso, testified in support of the evidence of her son, Samwel Bura that the suit land belonged to him and not to Merkior. Domitila Martin (**Dw7**) deposed in 2009 when he was a secretary of the ward tribunal, the late Samwel Bura sued Merkior for trespass. He stated that Samwel Bura summoned her mother Anna Basso to testify on his behalf. The evidence proved that the late Anna Bassi had no title over the suit land or else she would have sued Merkior for trespass instead of Samwel Bura.

Given the evidence on record, I find that had the tribunal properly analyzed the evidence it would found that **Lusila Kwaang Pareso's** evidence was heavier than **Catherine Bura Ingi's** evidence, hence, decided in her favour. I uphold the first ground of appeal. Consequently, I find that the suit land was the property of Samwel Bura and hence not subject of distribution as part of the estate of Anna Basso. Joseph Bura (**Pw5**), the administrator of the estate of the late Anna Basso (Damo) had no title to pass to **Catherine Bura Ingi**. Furthermore, **Catherine Bura Ingi** did not acquire title of the disputed land to claim against **Lusila Kwaang Pareso**, the administratrix of the late Samwel Bura's estate.

**Did the tribunal fail to take judicial notice of Civil Appeal No. 11/2020 and Appeal No. 9/2019?**

**Lusila Kwaang Pareso**, the appellant complained that the tribunal erred for not taking judicial notice in respect of civil appeal No. 11/2020 and Appeal No. 09/2019 which were cases between Joseph Bura (**Pw5**), the administrator of the estate of the late Anna Damo and **Lusila Kwaang Pareso**, the administratrix of the late Samwel Bura's estate. To support the ground of appeal, the appellant's advocate submitted that the appellant deposed before the tribunal that after she was appointed to administer the estate of her late husband she instituted a claim to the ward tribunal against Joseph Bura for including the disputed land as part of the estate of Anna Damo. The ward tribunal ruled in her favour. Joseph appealed to the district land and housing tribunal, which quashed the proceedings because the parties appeared in their personal capacity. He submitted that the district land and housing tribunal directed parties to properly institute the suit and that instead of complying with the direction, Joseph Bura finalized the administration of the estate of Anna Bura by including the disputed land. He added that the appellant's efforts to tender a copy of the judgment aborted as the tribunal sustained the objection raised by the respondent's advocate.

The respondent's advocate opposed the second ground of appeal by contending that the appellant did not prove her allegation of the existence of the judgment. She did not tender copy of the judgment of the tribunal. He submitted that section 110(1) of the Evidence Act, [Cap. 6 R.E. 2022] (the TEA) states that-

***110.-(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

He concluded that if the appellant wanted the tribunal to take judicial notice she must have properly tendered copies of judgment.

Truly he who alleges must prove. This is an established principle of law. However, I wish to state that a party is not duty bound to prove facts which a court ought to take judicial notice. See section 58 of the TEA. In addition, section 59 of the TEA lists down facts which a court shall take judicial notice. Unfortunately, a fact that there exists a judgment, decree and proceedings involving parties is not among listed facts. Thus, the appellant had a duty to prove that there was a previous judgment between the parties regarding the subject matter. The appellant did not prove this allegation as she did not tender copies of the judgments.

Even if, the appellant had tendered copies of the alleged judgment, the same would not have been of any assistance. The appellant submitted that the district land and housing tribunal quashed the proceedings and judgment directing any of the parties to institute the proceedings properly. The district land and housing tribunal gave no decision on the rights of the parties and the effect of quashing the proceedings is to reduce the parties to their original position. Thus, a decision a superior court or tribunal quashing the proceedings of its lower court or tribunal says nothing but a fact that parties have reverted to their original position. I therefore, do not see how that judgment would have been of help to the appellant.

In the end, I find no merit on the second ground of appeal and dismiss it.

**Was the tribunal justified to declare Catherine Bura Ingi the lawful owner of the suit land?**

The appellant complained in the third and fourth grounds of appeal that the tribunal erred to declare **Catherine Bura Ingi** rightful owner because; **one**, the suit land was legally owned by Roswita Samwel Bura, Bonaventura Samwel Bura, Ruphina Samwel Bura and Olympia Samwel Bura; and **two**, that the tribunal considered only probate case No. 2/2018 to declare **Catherine Bura Ingi** the lawful owner. To substantiate the



complaint, the appellant's advocate submitted that Anna Basso, who was the late Samwel Bura's mother died on 10.11.2017 and was buried on 25.11.2017 while Samwel Bura died on 8.12.2017. Both died intestate and the petitions for administration of the estate of the Anna Basso and Samwel Bura proceeded *in tandem*. He added that Joseph Bura objected the disputed land to be included in the estate of Samwel Bura by filing land case No. 3/2018 and appeal No.9/2018. The distribution of the estates stopped to await the outcome of the land dispute.

He added that on appeal, the district land and housing tribunal quashed the proceedings and judgment directing any of the parties to institute the proceedings properly. Instead of filing a fresh suit as the district land and housing tribunal directed, Joseph Bura (**Pw5**) included the disputed land in the estate of Anna Basso and distributed it to **Catherine Bura Ingi**. Thus, Joseph Bura included the disputed land in the estate of Anna Bura which was not part of that estate.

The respondent's advocate submitted that the appellant had no title to pass to Samwel Bura's heirs as the land did not belong to the late Samwel Bura. He stated that the appellant had no better title and legally could not have pass title that herself did not have. He referred to the Latin and legal

maxim, that is "NEMO DAT QUOD NON HABET- NO ONE GIVE WHAT HE DOES NOT HAVE". He added that the tribunal considered Probate No. 2/2018 because it is from that probate where the tittle of land passed from the deceased to the respondent.

The record is self-evident that before Joseph Bura (**Pw5**) passed the disputed land to the respondent there was an unresolved dispute of ownership. Joseph Bura did not take trouble to establish if the disputed land was part and parcel of the estate of Anna Basso. Joseph Bura (**Pw5**) shrewdly included the disputed land as part of estate of Anna Basso while he knew that and **Lusila Kwaang Pareso**, the administratrix of the late Samwel Bura's estate, had also listed it as part of the estate of Samwel Bura.

It should not escape our mind that it was and **Lusila Kwaang Pareso**, the administratrix of the late Samwel Bura's estate who was the first to open probate and administration matter and list the disputed land as part of the estate of Samwel Bura. Thus, Joseph Bura (**Pw5**) passed no better title than what he had as the administrator of the estate of Anna Basso. Joseph Bura (**Pw5**), the administrator of the estate of Anna Basso had a disputable title to the disputed land and that is what he passed to **Catherine Bura Ingi**.

The mere fact that Joseph Bura (**Pw5**) passed the disputed land to **Catherine Bura Ingi** did not give her better title. It would be extreme perilous if we were to accept the argument that once an administrator lists any property as the deceased's property and distributes it to heir, that heir acquires title to that property. If we subscribe and succumb to that position, people would lose their property by the act of an administrator listing any property and distributing it as the deceased's property without any proof of ownership.

It is obvious that there was dispute of ownership of the disputed land and Joseph Bura (**Pw5**), the administrator of the estate of Anna Basso knew it and he had instituted a suit to establish ownership. He was wrong and being unscrupulous to have distributed the disputed land as part and parcel of the estate of Anna. The district land and housing tribunal misdirected itself to base its decision on the evidence of a deceitful witness [Joseph Bura (**Pw5**)] or to rely on the proceedings of Probate No. 2/2018. There is no dispute that the probate court did not decide the issue of ownership at all. I wish to insist that a mere fact that an administrator lists and distributes a given property as part of the deceased's estate is not a conclusive proof that the property was the deceased's property. Thus, when there is a dispute

whether a given property forms part of the deceased's estate, it must be proved that the deceased owned the property. It is not enough to bring evidence to prove that the property was listed as the deceased's property and distributed to deceased's heir. I am of the final view that instead of relying on the proceedings in Probate No. 2/2018, the tribunal ought to have analyzed the evidence on record to find out if there was proof that the disputed land belonged to Anna Basso, the deceased.

**Did the tribunal err not to consider the evidence of Stephano Daniel (Dw5)?**

The appellant complained that tribunal erred in law and fact not to consider the evidence of Stephano Daniel (**Dw5**) or inquire him to produce the register book. To substantiate the complaint, the appellant's advocate submitted that the duty to prove land ownership acquired during Operation Vijji was vested in the village executive officer who held the list of lawful owners.

The respondent's advocate submitted that the Stephano Daniel (**Dw5**) had a duty to prove the allegation but he failed to produce the documents within his reach. To support his contention, he cited section 45 of the Land Disputes Court Act, [Cap. 216 R.E. 2019] which states that-

*45. No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.*

The record shows that Stephano Daniel (**Dw5**) was the hamlet chairman who testified that the disputed land was registered in the name of Samwel Bura as per the office record. He did not tender the register. Despite the fact the he did not tender the register, his evidence supported by the evidence of Victoria Bura Ingi (**Dw2**) who deposed that during the registration process Samwel Bura was photographed and the evidence of Consolata Bura (**Dw3**) that the deceased attended a seminar before their land was registered. It was not proper for the tribunal to disregard the evidence of Stephano Daniel (**Dw5**) without giving reasons. However, I do not share the appellant's views that the tribunal ought to have required Stephano Daniel (**Dw5**) to produce the register. It is a party to a civil suit who has a duty to prove his allegation. It was not a duty of the tribunal to call evidence one of the party. Thus, the fifth ground of appeal partly succeeds as shown above.

Eventually, I find that appeal has merit basing on the first ground of appeal, that the tribunal failed to analyze evidence leading to unjust decision. There was ample evidence to establish that the disputed land was the property of the late Samwel Bura. Thus, it did not form part of the estate of Anna Basso. For that reason, **Catherine Bura Ingi** did not acquire title of the disputed land by inheritance. Consequently, I set aside the judgment and decree of the district land and housing tribunal and declare that **Catherine Bura Ingi** is not lawful owner of the suit land. The appellant is awarded costs of this appeal.

It is ordered accordingly.

**Dated at Babati** this 6<sup>th</sup> day of July, 2023.



**John R. Kahyoza,  
Judge**

**Court:** Judgment delivered in virtual presence of the appellant's advocate Mr. Remmy William and in the absence of the respondent and her advocate with due notice. B/C Ms. Fatima present.

**John R. Kahyoza,  
Judge  
6.7. 2023**