

**IN THE HIGH COURT OF TANZANIA**  
**MUSOMA DISTRICT REGISTRY**  
**AT MUSOMA**

**LAND APPEAL NO. 15 OF 2022**

*(Originating from Land Application No. 135 of 2021 of the District Land and Housing Tribunal for Mara at Musoma)*

**KUNZIRA JOSEPH MKIRYA ..... APPELLANT**

**VERSUS**

**ELIAS HAMIS BAHAME ..... RESPONDENT**

**JUDGMENT**

24<sup>th</sup> & 25<sup>th</sup> July, 2023

**M. L. KOMBA, J.:**

In 2021 appellant filed Land Application No. 135 of 2021 (the application) at the District Land and Housing Tribunal for Mara at Musoma (the Tribunal), complaining that above named respondent had trespassed into his land and uprooted sisal plants which was a demarcation. In 2017 respondent started to cultivate in the disputed land which is measured 100 meters by 40 meters and continue to develop the disputed land.

Respondent denied the allegation claiming that the appellant is his neighbour and that they are separated by the natural tree. Previously the area was owned by his grandfather who was allocated by the village

council in 1974 while the appellant bought the said land in 1998 from Milembe. During the said purchase, the respondent was not consulted.

After a full trial Chairman noted that the applicant bought the disputed land customarily and in the disputed land there are houses which owned by other people who were not part in the suit and that Hon. Chairman was convinced that the applicant failed to prove his case and ordered that applicant and respondent to adhere to local/customary demarcation set in the disputed land and end up to dismiss the application.

Unsatisfied by that decision, the appellant lodge this appeal with four (4) grounds of appeal. When the appeal was set for hearing this court noticed irregularity of which needed to be clarified. In cherishing rights to be heard, parties were invited to address this court in irregularity noticed that the claim/application form which was filed in the tribunal did not indicate the size and demarcation of the disputed land (description of the disputed land).

On the hearing date, the appellant was represented by Mr. Daudi Mahemba and respondent had a service of Mr. Ostack Mligo, both learned advocates. This court noted irregularities in the proceedings of the tribunal and upon

appearance for hearing parties were invited to submit on the issue of size of the land and the demarcation/boundaries on the disputed land.

Mr. Mligo was the first to address the court. He submitted that the application form which initiate the application which was filed on 23/10/2021 did not describe the size nor the demarcation, it only mentioned the area where the said land is found which is in Butiama District, Kitanga harmlet. He submitted that this is contrary 3(2) of GN. No. 174 of 2003 made under the Land Disputes Courts, Cap 216. He explained that the law requires the application to describe the area and boundaries for that purpose he sees the whole proceedings was vitiated with illegality and the same should be nullified and pray this court to order retrial according the current law. Because the issue has been raised by the court, he prays the order without costs.

Mr. Mahemba concurred with counsel for the respondent submission that Reg 3(2) (b) require the form to explain the size and boundaries of the disputed land. He said the form which initiated this case is silent on that. It was his submission that witness explanation on what was testified during hearing was supposed to collaborate what was in the application form. He further concurred on the remedy as leaving it the way it is will make

judgment inexecutable as there are a lot of precedent in this. Mr. Mahemba prayed for costs arguing that he is the one who filed this appeal and made this court to see this irregularity.

The prayer for cost was objected by Mr. Mligo claiming that irregularity is noticed by court. The problem was caused by the applicant who is now the appellant who failed to mention his neighbours and explain his boundaries. He prayed this court to find this is legal issue raised by this court, therefore, the appellant not to be awarded with costs.

From the above counsels' submission, it is noticed that both counsels agree that the application form did not disclose the size and demarcation as required by law. They don't have argument on the way forward.

This is not a new thing happening in this court. For years decisions were made on irregularities like this and I appreciate the scholarly work of my learned brother Hon. Mtulya J. in **Hashim Mohamed Mnyalima (Administrator of the Estate of the late Mwamtumu Shehe Mashi) vs. Mihamed Nzahi and 4 others**, Land Appeal No. 18 of 2020, HC Tanga where he analyses various positions as a way forward when met

with akin situation and posed that enactment of the law without receipt of interpretation of the court is nothing and insisted that;

*'...the address of the suit premises or location of the land involved in the dispute in Regulation 3(2) (b) of the Regulations have already received interpretation of this court in a bundle of precedents and all agree principally that the land disputes registered in our tribunal or courts must identify specific size, location and demarcations'.*

See for instance **Hassan Rashid Kingazi & Another vs. Serikali ya Kijiji cha Viti**, land appeal no. 12 of 2021 and **Saimon Sori vs. Fedrick Matengo** Misc. Land Appeal No. 25 of 2022.

In all cited case, Hon Judge quash the judgment and set aside proceedings of the tribunal it was decided that any party who wish to initiate fresh and proper suit may do so in proper forum. There must be a compelling reason to make this court to depart from its previous decisions on the same subject matter, bearing in mind that this is a court of record. In the case at hand too this decision will follow the course. So far as the claim form did not comply with the requirement of law as per regulation 3(2) of GN. No. 174 of 2003 therefore, at this stage allowing the appeal may bring more chaos than cure during execution stage. However, the irregularity which has been noticed, cannot be left in court record although the tribunal

ordered each party to adhere to local/customary demarcation set in the disputed land.

In exercising revisional powers under section 43(2) of the Land Dispute Courts Act, Cap 216 R.E 2019, I hereby quash the judgment and set aside proceedings of the tribunal in land Application No. 135 of 2021. I proceed to struck out this appeal as it originates from nullity proceedings. Any interested party in the dispute may initiate fresh and proper suit in competent forum in accordance to laws regulating land matters. Considering the issue that dispose the case raised by this court, I make no order as to cost.

It is so ordered.



*NK*  
**M. L. KOMBA**  
**Judge**  
**25 July, 2023**

Judgment Delivered in chamber in the presence of **Kunzira Joseph Mkirya**, the appellant and **Elias Hamis Bahame** the respondent.

*NK*  
**M. L. KOMBA**  
**Judge**  
**25 July, 2023**