

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 4 OF 2022

(Appeal from the judgment and decree in Land Application No. 100 of 2014 before
District Land and Housing Tribunal for Mbulu at Dongobesh)

BERNADETA ATHUMANI (Administratrix of the estate of the late
BOAY MAYI) **APPELLANT**

VERSUS

CERPINA J. MAYOMBA (administratrix of the estate of the late
GEORGE MAYOMBA).....**RESPONDENT**

RULING

Date: 30/3/2023 & 27/4/2023

BARTHY, J.

This is an appeal from farm dispute measuring about two and half acres situated at Harsh Village, Bashay Ward Mbulu District (hereinafter referred as the suit land). As each party in the instant appeal claims to be the lawful owner of the suit land.

Hence the dispute was referred to Babati District Land and Housing Tribunal (to be referred to as the first trial tribunal) for adjudication. The



records reveal that dispute was filed by the late George Mayomba suing through his attorney one Africanus Mayomba against the appellant.

The matter was partly heard before the trial tribunal, but it was later transferred to Mbulu district housing and land tribunal (the second trial tribunal) in which the hearing started afresh.

The records also show that, the matter proceeded ex-parte against the appellant in terms of Regulation 13(2) of the Land Disputes Courts (the District Land Housing Tribunal) Regulations, G.N. No. 174 of 2003 (the Regulations). At the end the matter was decided in favour of the respondent who was declared to be the lawful owner of the suit land.

The appellant aggrieved with the decision, he preferred the instant appeal with six grounds of appeal which I will not reproduce them. It is on record that the court ordered the appeal to be disposed of by way of written submissions, the order which was complied with by the parties.

However, in the course of composing the judgment I found it pertinent to open up the proceedings in order to address two important issues on the propriety of the proceedings on the following issues;



1. The compliance of Order VII Rule 17 of the Civil Procedure Code [CAP 33 R.E 2019] (the CPC).
2. Transfer of the case and its effect on the record.

Hence, I invited the parties to address the court on the above issues. Messrs. John J. Lundu and Ndonjekwa learned advocates appeared for the appellant and respondent respectively.

Addressing to the issues above, Mr. Lundu argued that, the amendment of pleadings must be in conformity with Order VII Rule 17 of the CPC, and should be made in accordance to the prayer made.

He submitted further that the records reveal, the respondent with the power of attorney vested to Africanus allowed him to prosecute the case. Under power of attorney Africanus testified on behalf of the applicant. However, before the applicant's case was not closed, the donor of the power of attorney namely Boay Mayi passed away.

Therefore, the first trial tribunal ordered the amendment of pleadings to join the administrator of the deceased's estate. Then the case was transferred to second trial tribunal at Mbulu. The records also show that Cerpina Mayomba was not the personal representative of the deceased



instead of Africanus. Before the second trial tribunal, new issues were framed and Cerpina Mayomba testified as PW1 leaving the testimony of Africanus hanging. Again, Africanus testified as PW2 before Mbulu DLHT.

Mr. Lundu further submitted further that, the amendments were not proper hence the proceedings and decision should be nullified and this court should order a retrial before another chairperson.

On the respondent's party, Mr. Ndonjekwa learned advocate maintained that the amendments made were proper as Cerpina Mayomba was appointed the administratrix of the deceased's estate. Then the amendments ought to reflect the claim was preferred by administrator on behalf of the deceased.

Having heard the submission of both sides on the issues raised above, I will begin my deliberation with the first issue.

It is on record that following the death of Boay Mayi (the respondent), a prayer was made to join in the matter the administratrix of the deceased's estate. The prayer which was granted by the court. The respondent herein who was the applicant before the first trial tribunal was required to do necessary amendments to allow the appearance of the



administratrix of the deceased estates. However, the records reveal that this was coupled with additional of new facts as well.

The record clearly shows that before the amendment was made, the name of the Applicant was **Gorge Mayomba** (name Gorge with five letters), however after the amendment, the deceased name changed to be **George Mayomba** (name George with six letters). Still, there was no explanation as to whether **Gorge Mayomba** and **George Mayomba** are the same person.

Going through the order for amendment made by the first trial court, it was clear on substituting the name of the deceased with that of the administratrix.

It is the settled law that an order for amendment of pleading should not be general or open ended. It must specify points that are to be added or removed. The danger of making open blanket order is to give the party the favour of including new facts to the pleading and therefore, it will not be in compliance with Order VII, Rule 17 of the Civil Procedure Code. As decided by the Court of Appeal in the case of **Peter Wagesa Chacha**



Timas and others v. North Mara Gold Mine Limited, Civil Appeal No. 49 of 2020 [2023] TZCA 29 TanzLII.

Also, in the case of **Salum Abdalla Chacha t/a Rahma Tailors v. The Loans and Advances Realization Trust and 2 Others**, Civil Appeal No. 49 of 1997 (unreported) the Court of Appeal insisted, among other things, that: -

"The amendment must aim at and be limited to what will be necessary for determining the real questions in dispute between the parties.... Any amendment must not result in a substitution of an entirely new case".

In the present matter the first trial tribunal had clearly ordered the administratrix of the deceased's estates was to be joined. In that respect, I have also considered the arguments of Mr. Ndonjekwa that the amendments made were proper as it was required to state their claims as administrators.

The amended application had new facts which also included the size of the suit land as well as reliefs claimed. Should there be a need to include those new facts, there was the need to move the court properly to order



for amendment of the pleading. Thus, the amendments made were not in conformity with the order of the court.

On the second issue on the transfer of the case file, as stated earlier, the matter was filed at Babati tribunal: Where four issues were framed and the hearing of the matter commenced. The matter was later on transferred to Mbulu second trial tribunal; again, new issues were framed on the same records.

After the transfer of the matter, the successor chairperson never said anything regarding the issues which were framed before as well as the testimony of PW1 which had already been received. As it was necessary the record to reflect on the reasons for transfer and second and why it was important to receive new evidence.

There is no law which expressly permits transfer of case from one tribunal to another. The Land Disputes Courts Act [CAP 216 R.E 2019] is silent on the issue of transfer between tribunal. Equally, Order XVIII Rule 10 of the CPC guides the process where there is the transfer between presiding officers. For ease of reference the said provision, Order XVIII Rule 10 states:



"(1) Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which the predecessor left it."

Undoubtedly, the above provision allows a successor judge or magistrate or tribunal chairperson to take over and proceed to hear a matter to its conclusion where another judge or magistrate is prevented from proceeding and concluding the matter by death, transfer or any other cause.

The successor is however required to assign reasons for the same. Failure to assign reason(s) for such takeover is fatal. See the case of **M/S Georges Centre Limited v. Attorney General and Another**, Civil Appeal No. 29 of 2016 (unreported), **Salma Mohamed Abdallah v. Joyce Hume**, Civil Appeal No. 149 of 2015 (both unreported);



In the instant matter there were no reasons advanced for the transfer of the matter as required by the law. In that account I find the omissions pointed out vitiate the whole proceedings as well as the decision. It is for that reasons I proceed to quash and set aside the whole proceedings and decision.

As the way forward, as Mr. Lundu had suggested the court should order the retrial before another chairperson. However, the recourse in the circumstances of this matter, parties are at liberty to file a fresh matter before the court/tribunal with competent jurisdiction.

As the omissions leading to nullification of the proceedings and decision were pointed out by the court *suo motu* I will not make an order as to costs.

It is so ordered.

Dated at Babati on 27th of April, 2023.




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G. N. BARTHY
JUDGE

Ruling delivered this 27th day of April 2023 in the presence of the parties and their advocates Mr. John Lundu for the appellant and Mr. Kuwengwa for the respondent.



B.A. MPEPO
Deputy Registrar
27/4/2023