

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)

AT MUSOMA

LAND APPEAL No. 3 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Application No. 78 of 2013)*

ADAM MOHAMED ABDALLAH APPELLANT

Versus

1. EBAMBO NGERENGERE
2. FELIX ALBINUS
3. MAEMBA MASATU
4. LAMECK JOHN
5. MWAJUMA ELIM
6. NGANE NYAMAKUMBATI
7. SABHANYA NDEGE
8. MASHAKA MATARA
9. PETER WASONGA
10. BARAKA DANIEL
11. CHRISTINA NDAGO
12. GEORGE MABURA
13. NYAMASE CHRISTOPHER NDEGE
14. MAMA PENDO
15. JULIUS MAKARANGA
16. SHIDA MJINJA
17. BARAKA MJINJA
18. SABINA KOKORO
19. MWALIMU KIAGO
20. RUMWAMWA KHAMISI

..... **RESPONDENTS**

RULING

24.10.2023 & 24.10.2023
Mtulya, J.:

Ms. Majengo Makang'a (the deceased) had preferred **Land Application No. 78 of 2013** (the application) before the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) against the indicated twenty respondents for the land: *located at*

Mgaranjabo Street in Buhare Ward within Musoma District in Mara Region.

The indicated descriptions of the land were noted by the tribunal for declining sufficient identifications of the land in dispute to distinguish it from other lands surrounding the area in accordance to Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations) with regard to the words: *the address of the suit premises or location of the land involved in the dispute* and precedent in **Hashim Mohamed Mnyalima v. Mohamed Nzai & Four Others**, Land Appeal No. 18 of 2020. Following the finding, the tribunal had granted leave to the applicant in the application to amend the application to abide with the Regulations and directives of this court in the cited precedent. However, the applicant had declined to do as per requirement of the cited Regulation and precedent.

Sometimes in 2018, the applicant had expired and her son, **Mr. Adam Mohamed Abdallah** (the appellant) had successfully applied and was granted letters of administration of the deceased in **Probate and Administration Cause No. 34 of 2018** (the cause) before **Musoma Urban Primary Court** (the primary court) on 27th March 2018 hence stepped into the shoes of the applicant on 3rd

May 2018. The tribunal heard and finally resolved the application in favor of the appellant. However, the decision of the tribunal was protested in this court on 13th September 2021 in **Land Appeal No. 25 of 2021** (the appeal). This court after hearing both parties, had noted at page 7 of the judgment that:

I went through the original record of the trial tribunal. It is vivid that the learned chairman did not sign after recording the evidence of all witnesses...the authenticity of the evidence adduced during the trial is at issue...the omission is an incurably irregularity...the proceedings of the tribunal from 26th March 2019 is a nullity.

Finally, this court had resolved that: *I hereby nullify the proceedings of the trial tribunal starting from 26th March 2019, quash and set aside the judgment and decree. I order retrial of the case starting from the proceedings of 26th March 2019.* The application was then remitted back to the tribunal for hearing.

However, upon landing at the tribunal, the respondents protested the hearing of the application for want of the cited Regulation 3(2) (b) of the Regulations and precedent in **Hashim Mohamed Mnyalima v. Mohamed Nzai & Four Others** (supra). The tribunal had to resolve the matter before proceeding any step further. After registration of all relevant materials for and against

the point of objection, the tribunal found merit and struck out the application on 7th November 2022.

The decision of the tribunal on the point had aggrieved the appellant hence lodged the present appeal asking this court to resolve an issue: *whether it was proper for the tribunal to resort to the point of objection instead of the directives of this court to proceed with application hearing*. Today morning, this matter was scheduled for hearing. The appellant had appeared in person and the respondents had marshalled **Mr. Thomas Manyama Makongo**, learned counsel to argue the appeal.

The dual had a long conversations in the Chambers of this court, and finally had noted and agreed on three (3) issues, namely: first, the letters of administration belongs to the appellant have expired without any renewal to mandate him in prosecuting the appeal; second, it is vivid that the land in dispute is not certain in terms of size and demarcations; and finally, strike out order of the tribunal in the application allows the appellant to prefer fresh and proper application in the tribunal, rather than resorting on redundant issues, which do not resolve the substance of the contest.

Following the conversations, the appellant had prayed to withdraw the appeal without costs as he is a poor lay person

without any legal knowledge. The first prayer was supported by Mr. Makongo, but the second was declined. When prompted the reasons of protest, Mr. Makongo submitted that the appellant has been disturbing the respondents without justifiable cause and that ignorance of the law is not an excuse in legal issues.

I have heard the appellant and considered the protest on costs registered by Mr. Makongo. I am aware that this dispute was initially initiated at the tribunal on 13th August 2013 and today is 24th October 2023, which is more than ten years the parties have not enjoyed their substantive rights. The contest has yet to be resolved to the finality and now, three (3) reasons were registered to prefer fresh and proper application in the tribunal. The move was introduced by Mr. Makongo, but well appreciated by the appellant.

In that case, the appellant has displayed a gentlemen appreciation of legal issues. He cannot be subjected to costs for various reasons. First, he is a poor village man; second, he is not a learned person; third, he was introduced to the indicated three (3) legal issues and appreciated the same without reservations; fourth, he saved costs and time of this court; and finally, there is enactment of the law in section 3A (1) & (2) of the **Civil Procedure Code [Cap 33 R.E 2022]** (the Code) on expeditious, proportionate

and affordable resolution of civil disputes brought in civil courts by the parties. Parties in civil disputes and this court must cherish the enactments in the Code.

This is a court of law with touches of justice and sense of overriding objective enacted in the indicated section of the Code. The instant move of the parties is part of cherishing proper, expeditious and affordable resolution of the land contests. In the circumstances of the present appeal, the two (2) prayers registered by the appellant cannot be declined.

In the end, I invite the provisions of section 43 (1) (a) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] and section 95 of the **Civil Procedure Code** [Cap. 33 R.E. 2022] to grant the prayers registered by the appellant and hereby mark the appeal withdrawn in favor of fresh and proper application. I do so without costs for the indicated five (5) reasons above. In that case, each party shall bear its costs. In the intended application, if he so wishes to lodge, the appellant must abide with the current laws regulating land contests.

It is so ordered.





F. H. Mtulya

Judge

25.10.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. Adam Mohamed Abdallah** and in the presence **Mr. Thomas Manyama Makongo**, learned counsel for the respondents.



F. H. Mtulya

Judge

25.10.2023