

**IN THE HIGH COURT OF TANZANIA**

**SUB – REGISTRY OF MWANZA**

**AT MWANZA**

**LAND APPEAL NO. 28 OF 2023**

*(Arising from the Judgement of the District Land and Housing Tribunal for Ukerewe District at Nansio (Hon. Kato, Chairman) in Land Appeal No. 39 of 2021 origination from the Ward Tribunal for Murutunguru Ward in Land Case No. 27 of 2021)*

**MALIMA BUHARAGE.....APPELLANT**

**VERSUS**

**MGALA MSIMU.....1<sup>st</sup> RESPONDENT**

**AKISA MALIMA.....2<sup>nd</sup> RESPONDENT**

**JUDGEMENT**

*Date of last order: 1<sup>st</sup> November, 2023*  
*Date of Judgement: 1<sup>st</sup> November 2023*

**MTEMBWA, J.:**

In the Ward Tribunal for Murutunguru Ward, the Appellant herein battled with the Respondents in respect to a piece of land located at Murutunguru Village. It was alleged by the Appellant that he is the administrator of the estate of the late Buharage Malima Mugusi. As administrator, he identified the properties forming part of the late Buharage Malima Mugusi and distributed the same to the heirs. That having filed the report to the Court, on his return, he

forming part of the estate were invaded by the Respondents on 14<sup>th</sup> August 2021. That he reported the matter to the Court and was advised to pursue the matter at the ward Tribunal. While the Appellant brought one witness (the Appellant himself), the Respondents brought four witnesses.

In the end, the Ward Tribunal for Murutunguru having analyzed the evidence adduced by the parties ruled in favour of the Respondents and the Appellant was ordered to vacate the disputed land. The Appellant was dissatisfied as a result thereof, he unsuccessfully appealed to the District Land and Housing Tribunal for Ukerewe District at Nansio. He has now filed a Petition of Appeal with the following grounds;

1. *"Kwamba, Baraza la ardhi na Nyumba lilijiongoza vibaya kisheria na kiutaratibu kwa kutamka wajibu rufani kama wamiliki halali ilihali kuna ushahidi unaokinzana kati ya wajibu rufani na mashahidi wao.*
2. *Kwamba, baraza lililosikiliza rufaa lilijiongoza vibaya kisheria na kiutaratibu kwa kutamka wajibu rufani kama wamiliki halali kwa kuzingatia hoja ya muda wajibu rufaa waliokaa*

*kwenye eneo la mgogoro ilihali hoja hiyo haikikuibuliwa baraza la kata.*

- 3. Kwamba, baraza lililosikiliza rufaa lilijiongoza vibaya kisheria na kiutaratibu kwa kushindwa kutathimini ushahidi mzito uliotolewa na mleta rufaa pamoja na mashahidi wao”.*

During hearing of this appeal, the Appellant and the Respondents appeared in person and the same was argued orally. Staging the floor, the Appellant argued generally the Petition of appeal. He started by identifying the boundaries of the disputed land. He added further that the disputed land referred to by the 1<sup>st</sup> Respondent during hearing was dissimilar from the actual one, the subject of this appeal. He narrated further that the property owned by the 1<sup>st</sup> Respondent, if any, is not in dispute. The Appellant attacked the evidence adduced by Ms. Tabu Msimu and Exaveli Mabila Tungaraza. He said, the said witnesses were not telling the truth. On the evidence adduced by the 2<sup>nd</sup> Respondent, the appellant submitted that she was not telling the truth at the trial tribunal. He narrated also on how and when he was appointed as administrator of the estate of the late Buharage Malima Mgusi. He pleaded to this court to find that the appeal has merits.

The 1<sup>st</sup> Respondent in reply submitted that the disputed land used to be owned by the late Msimu, her father. That to date, she stays on the same land. That when the parents were alive, there was no dispute at all concerning the disputed land it is only this time when the Appellant started to demand that the same belonged to his father. She added further that even where the appellant lives currently used to be the land owned by Msimu. She narrated further that the appellant is her brother since their parents are siblings. She finalized by submitting that the disputed land has never been invaded by her as alleged by the appellant because the same belongs to her father. She prayed to this Court to dismiss the appeal with costs.

On her part, the 2<sup>nd</sup> Respondent submitted that she was married in 1996 and upon marriage, the father-in-law one Msimu Malima allocated the disputed land to her and her husband. That they have been using the said land since then to date. It was submitted further that she wondered why she was sued alone instead of being joined with her lovely husband who is still alive. She added also that at the trial tribunal it was learnt that the disputed land never belonged to Buharage Malima but to Msimu Malima. That before the death of the

said father in law, there was no dispute at all. She then implored this Honourable Court to dismiss the appeal with costs. The Appellant had nothing to rejoin.

Having heard the rival submissions by the parties, I had ample time to scrutinize the records of the tribunals below before arriving at the conclusion. In the course, I was unable to appreciate the records of the District Land and Housing Tribunal for Ukerewe at Nansio dated 18<sup>th</sup> January 2023. On the scheduled date, it could appear, the parties were in attendance ready for the hearing. The Appellant submitted to the grounds of appeal with the view of challenging the Judgement of the Murutunguru ward Tribunal dated 28<sup>th</sup> September 2021. I failed to grasp who between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent replied what at the Tribunal. At pages 8 and 9 of the typed proceedings this is what can be seen.

***MAJIBU***

- *Yote aliyosema sio kweli kwani maeneo hayo ni ya baba mkwe Msimu Malima. Na nimeolewa mwaka 1996 na nilikuta mashamba hayo wanayatumia na baada ya baba mkwe kufariki ndipo mgogoro ukauanzisha*

- *Shamba hilo hajawahi kulilima mrufani ni eneo tunalitumia sisi shamba letu.*
- *Hajamshitaki mdogo wake yupo (mme wangu) lakini ananishitaki mimi shimeji yake.*

***NAFUU***

- *Rufaa hii itupiliwe mbali.*
  - *Hukumu ya kata itekelezwe.*
  - *Gharama tulipwe.*
- Ni hayo tu.*

Then, the Appellant rejoined. The assessors then were allowed to ask questions for clarifications. At pages 11 and 12 of the typed script of the proceedings it cannot be easily resolved as to who was answering the questions. One cannot understand whether it was the 1<sup>st</sup> or 2<sup>nd</sup> Respondent.

From what I have quoted above, it is difficult to know who, between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent replied what. A close look, one may think that the one submitted at the said tribunal was the 2<sup>nd</sup> Respondent considering what she submitted during hearing of this appeal. Of course, the submissions are the same. The question that may arise is whether the 1<sup>st</sup> Respondent was heard by the said

tribunal. Considering the circumstances, on 1<sup>st</sup> November 2023, I asked the parties to address me on this issue.

Replying to the issue in question, the Appellant and 2<sup>nd</sup> Respondent both submitted that they were present on the day when the matter was called for hearing at the District Land and Housing tribunal for Ukerewe at Nansio. However, they confirmed that the 1<sup>st</sup> Respondent was not offered an opportunity to reply or present her case. While the Appellant was of the views that it was incorrect not to allow her to submit in reply, the 2<sup>nd</sup> Respondent appeared to have no problem with that.

As said before, I failed to appreciate the records of the District Land and Housing tribunal for Ukerewe at Nansio when I was preparing this Judgement. In that it was not clear as to who, between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents said what in reply to what was submitted by the Appellant. By records, it is not clear either as to who also between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent answered the question from the assessors. The Appellant and the 2<sup>nd</sup> Respondent confirmed that the

1<sup>st</sup> Respondent was not given an opportunity to be heard when the appeal was called for hearing.

To me, whether the 1<sup>st</sup> Respondent was heard or not should have been reflected in the records. I will therefore not venture to determine what is not on records. It suffices here to note that the records are not clear as to who replied what on the day of hearing between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. I also looked at the hand written proceedings only to note that the same reflect what can be seen on the typed one. In such circumstances It is doubtful whether the impugned Judgment is proper.

To avoid confusion, it is proper and mandatory for the tribunal to make sure that the records are so clear and unambiguous reflecting who said what for the proper determination of the matter on appeal or Revision. It must be understood that the records of the court are not only for the use of the parties but also the general Public.

In the Case of ***Imran Murtaza Dinani Vs Ballore Transport LTD***, Revision Application No. 253 of 2022, (HC Labour Division) at Dar es Salaam the Court more or less faced the same situation and had this to say;



*"Because of the improper recording of proceedings that he made the said proceedings incomprehensible as correctly submitted by the counsel for the parties, this court cannot know exactly what was testified by the witness. When taking proceeding we should remember that the same is subject to scrutiny an appeal or revision. More importantly, those proceedings are for consumption of the parties and the Public. They are not only for our Consumptions".*

It goes therefore that with these proceedings, I can not surely determine the appeal effectively. In the circumstances, the application of the principles in ***Fahari Bottlers Limited and Another v. Registrar of the Companies and Another (2000) TLR 102*** are inevitable. The proceedings in the District Land and Housing Tribunal for Ukerewe in Land Appeal No. 39 of 2021 are unclear and confusing, as said before, one cannot understand who said what.

In the end, the Proceedings of the District Land and Housing Tribunal for Ukerewe at Nansio in Land Appeal No. 39 of 2021 and the resultant Judgement dated 4<sup>th</sup> May 2023 are nullified and set aside. The file is to be returned to the same Tribunal for re-hearing of the

Appeal by another Chairman sitting with a new set of assessors. Since the litigants are relatives, there will be no order as to cost.

I order accordingly.

Right of appeal explained.

**DATED at MWANZA** this 1<sup>st</sup> November 2023.



**H.S. MTEMBWA  
JUDGE**

The Judgement is delivered today, 1<sup>st</sup> November, 2023, in the presence of the Appellant and the 2<sup>nd</sup> Respondent who appeared in person and in the absence of the 1<sup>st</sup> Respondent.

**H.S. MTEMBWA  
JUDGE**