

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TABORA DISTRICT REGISTRY  
LAND APPEAL NO. 22 OF 2022**

*(Arising from Land Application Number 66 of 2019 from the District Land  
and Housing Tribunal for Tabora)*

**HAWA KAZIMOTO .....1<sup>ST</sup> APPELLANT**

**MOSSI KAZIMOTO** *(Personal legal representative)*

*Of Yusuph Kazimoto ..... (deceased 2<sup>ND</sup> APPELLANT*

**VERSUS**

**ISSA ABDALLAH KAMBONDOMA ..... 1<sup>ST</sup> RESPONDENT**

**HELIOS TOWERS TANZANIA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date:09/08/2023 & 01/09/2023*

**BAHATI SALEMA, J.:**

This appeal emanates from the dispute involving the appellants and the respondents over a piece of land situated at Long Street and Usagara Junction, Tabora Municipality.

In the District Land and Housing Tribunal the appellants Hawa Kazimoto and Mossi Kazimoto the later suing in the capacity of Personal Legal Representative of the late Yusuf Kazimoto sued the respondents Issa Abdallah Kambondoma and Helios Towers Tanzania Ltd via Land Application Number 66/2019 praying among other things a declaration by the Tribunal that the applicants are the lawful owners of the suit land.

In the course of proceedings, on 26/02/2020 the 1<sup>st</sup> respondent lodged a Written Statement of Defence equipped with two preliminary

points of objection and for determination of this appeal I will quote one point which is the umbilical cord of this instant appeal, it reads;

*That the application is bad in law for non-joinder of the necessary parties namely the Registrar of Titles and Tabora Municipal Council who ought to have been impleaded for a just and proper determination of this application.*

As it has been a long-established procedure of Courts in our jurisdiction, the learned tribunal Chairman stayed the main proceedings and dealt with the points of law raised through preliminary objection.

The record reveals that the Preliminary objection was disposed of by way of written submissions and on 17/07/2020 the learned chairman delivered his decision overruling the objections, I prefer to quote that part of the ruling that;

*"In short upon looking at the file and submission of the parties I proceed to overrule and or dismiss the Preliminary Objection so raised by the 1<sup>st</sup> Respondent simply because it is my view that the point so raised needs to be proved that they need evidence so they are not qualified to be Preliminary Objection as per the directives of the famous case of **MUKISA BISCUIT (1969) EA 696 THE COURT OF APPEAL OF EAST AFRICA.***

*Therefore, the preliminary objection so raised by the 1<sup>st</sup> Respondent is hereby overruled and the case is hereby ordered to proceed on merits."*

After delivering the ruling and having ordered the suit to proceed on merit, the tribunal Framed two issues of fact as translated and quoted below;

1. *Who is the rightful owner of the disputed area?*
2. *What benefits do the parties deserve?*

Parties were fully heard and after closing the defence case the tribunal Chairman informed the parties of a need to call the Registrar of Titles as a witness of the Court to help the tribunal reach a fair and just decision. The Registrar of Titles was summoned and on 01/08/2022 one Emmanuel Stephen Gwaltu (Deputy Registrar of Titles) appeared before the tribunal.

Upon hearing the testimony of the Deputy Registrar it was revealed that the office of Registrar of Titles has the record of two titles all in respect of the suit land. At this juncture, the learned trial Chairman changed his mind and re-determined the preliminary objection he had overruled earlier. He struck out the application for not joining the necessary parties.

Aggrieved by the decision of the Tribunal Chairman, the appellants preferred this appeal couched with five grounds of appeal namely;

1. *That, the trial tribunal erred in law and facts by raising and determining the issues of non-joinder of parties which had been raised and determined on 17/07/2020 while the tribunal was already functus officio.*
2. *That, the trial tribunal erred in law and facts for failure to decide on the argument raised by the appellant regarding the cause of action.*
3. *That, the trial tribunal erred in law and facts by ordering the appellant to join other parties while the appellants have no cause of action against them.*

4. *That, the trial tribunal erred in law and fact by holding that the first respondent has a certificate of title in which its renewal was refused by the authority and used that holding to justify the order of joining other parties.*
5. *That, the trial tribunal abdicated its duty by failing to decide on the merits of the application having heard both parties and summoned the assistant Registrar of Title to testify as the Court's witness.*

When the appeal was called up for hearing, Mr. Inhard Mushongi learned counsel appeared for the appellants whereas Mr. Kamaliza Kayaga senior counsel appeared for the 1<sup>st</sup> respondent and Ms. Elizabeth Kifai appeared for the 2<sup>nd</sup> respondent.

The five grounds of appeal paraded by the appellants were fully covered by the learned advocates during submissions. I have considered the submissions as presented by the appellant's counsel as well as the respondents' counsel. One key issue for determination in this appeal is whether the trial tribunal became *functus officio* when it determined the Preliminary Objection on 17/07/2020.

Order XIV rule 1(2) of **the Civil Procedure Code**, Cap.33 [R.E 2019] states that;

*"Where issues both of law and of fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined."*

The law at the above-quoted provision recognizes two types of issues, there are issues of law and issues of fact. According to the rules of procedure the issues of law are determined prior to framing of issues of fact or if the issue of law is raised at any point during the hearing the issue(s) of fact are stayed pending the determination of the raised issue(s) of law. If the issues of law are overruled the determination of issues of fact follows.

What happened in the trial tribunal is that the issue of law on non-joinder of necessary parties was fully determined by the trial chairman on 17/07/2020; from that point, the tribunal became *functus officio* from determining that same matter again in that same suit as was stated in the case of **John Barnaba Machera V North Mara Gold Mine Limited** , Civil Appeal No. 204 of 2019 and **NBC LTD and IMMA ADVOCATE V Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 so, it was improper for the chairman to raise *suo mottu* the issue of non-joinder of necessary parties and dismiss the appellant's application. I agree with the appellant's assertion that the trial Chairman abandoned his duty of delivering judgment after he had already heard evidence from both parties.

Based on the analysis presented herein above, I hereby quash and set aside the ruling of the District Land and Housing Tribunal for Tabora in Land Application No. 66 of 2019 delivered on 02/09/2022. Further, I order the trial chairman to proceed with the case and deliver judgment based on the evidence and the law presented during the trial.

No order as to costs.

Order accordingly.



**A. BAHATI SALEMA**  
**JUDGE**  
**01/09/2023**

**Court:** Judgment delivered in presence of Mr. Mshongi Inhard, learned counsel for the applicant who was present and Mr. Akram Magoti, learned counsel h/b of Mr. Kayaga Kamaliza and both parties.



**BAHATI SALEMA**  
**JUDGE**  
**01/09/2023**

Right of Appeal fully explained.



**BAHATI SALEMA**  
**JUDGE**  
**01/09/2023**