

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF KIGOMA**

**AT KIGOMA**

**MISC. LAND APPEAL NO.06 OF 2023**

**KUISHIWA RAJABU SUNGURA .....APPELLANT**

**VERSUS**

**KIZA HUSENI MKOMBA.....RESPONDENT**

**(From the District Land & Housing Tribunal for Kigoma Region, at Kigoma)**

**(Chinuku, Chairperson)**

**dated 7<sup>th</sup> November 2022**

**in**

**Land Appeal No. 67 of 2022**

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**JUDGEMENT**

27<sup>th</sup> October & 27<sup>th</sup> November 2023

**Rwizile, J.**

This second appeal arises from the decision of the District Land and Housing Tribunal (DLHT). Previously, the appellant successfully filed a land dispute before the Ilagala Ward Tribunal claiming that her house was demolished, threatened, and prevented by the respondent from proceeding with construction of the house in her plot of land situated in Ilagala village.

The tribunal upon hearing the dispute was convinced that the land belonged to her and the respondent was ordered to vacate the premises and pay compensation for the damages caused to the tune of TZS 1,500,000.00. Aggrieved, the respondent appealed to the District Land

and Housing Tribunal where he was successful. It was held that the Ilagala village government was a necessary part and failure to join her was fatal to the case and that the trial tribunal did not evaluate the evidence. A matter was therefore dismissed. The appellant was aggrieved, she has filed this appeal on 4 grounds;

- i. That, the District Land and Housing Tribunal grossly erred in both law and facts by quashing the decision of the trial tribunal on the ground that there was non-joinder of the necessary parties to wit the ilaga village Council, **MERINA GWIMBUGWA** and **MARIAMU BALAMPAMA** despite the facts that **MERINA GWIMBUGWA, MARIAMU BALAMPAMA** and the leaders of the ilagala village council who allocated the suit property to the Appellant were called as witnesses by the parties herein.
- ii. That, the District Land and Housing Tribunal grossly erred in both law and facts by quashing the decision of the trial tribunal on the ground that there was evidence by one **MEDA JOHN MAILA** the former chairman of the Village (2003 -2004) that at Kabuyanga Hamlet there was no open space while there was a cogent and unshaken evidence by the Appellant and her witnesses which

proved that the suit property was an open space and the same was confirmed by the trial tribunal site visiting.

- iii. That, the District Land and Housing Tribunal erred in both law and facts by quashing the decision of the trial tribunal by holding that the trial tribunal did not scrutinize and evaluate the evidence before it while the trial tribunal evaluated the evidence of the parties herein and the evidence by the Appellant was heavier than that of the respondent.
- iv. That, the District Land and Housing Tribunal chairman erred in both law and facts by departing from assessors' opinions without assigning any reason.

Parties to this appeal are both laypersons and were not represented. Before this court, the appellant only said her land was with three plots each measuring 15 X 20 metres, given to her by the village government. She asked this court to restore the decision of the trial tribunal.

On the part of the respondent, it was argued that the land belonged to the late mother and sister and that the village government never acquired it. This court was asked this court to dismiss this appeal.



The judgment of the DLHT has nullified the judgment of the trial tribunal as I said before for two reasons, failure to join the necessary party, the village government, and failure of the tribunal to evaluate the evidence. The parties being laypersons had nothing to contribute in expounding the four grounds raised. It is my duty under the prevailing situation, to scrutinize pleadings by laypersons to make sure justice is not thwarted because of having no legal representation.

To begin with the first ground on non-joinder, from my understanding of the law, the suit cannot be defeated as it has been because of misjoinder or non-joinder of the parties. Order 1 Rule 9 of the Civil Procedure Code, whether applicable in land matters or not, still provides the backdrop of what the court has to do in the situation.

*A suit shall not be defeated because of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.*

My first consideration would be, whether the Ilagala Village Council or government was a necessary party in the circumstances of this matter and whether the omission to join her as a necessary party entitled the DLHT to quash the proceedings of the Ward Tribunal.

It is common ground that, a distinction between necessary and non-necessary parties has been made by the courts. Citing as a paradigm, the Court of Appeal in the case of **Tang Gas Distributors Limited v. Mohamed Salim Said & 29 Others**, Civil Application for Revision No. 68 of 2011 (unreported) when considering circumstances upon which a necessary party ought to be added in a suit stated that: -

*"...an intervener, otherwise commonly referred to as a **NECESSARY PARTY**, would be added in a suit under this rule ...even though there is no distinct cause of action against him/where: -*

(a) NA

(b) ***his proprietary rights are directly affected by the proceedings and to avoid a multiplicity of suits, his joinder is necessary so as to have him bound by the decision of the court in the suit [Emphasis added].***

In yet another case, **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman and Another**, Civil Revision No.6 of 2017 (unreported), when faced with an akin situation, it was stated that: -

*"The determination as to who is a necessary party to a suit would vary from case to case depending upon the facts and*

*circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."*

Delving from the referred cases above, it is my settled view that, in the circumstance, the Ilagala Village Government was not a necessary party who ought to have been joined in the proceedings. This is so because, in the circumstances of the case the subject of this appeal, Ilagala Village Government was not an indispensable party to the dispute between the two parties, whose absence would render no effective decree or order be passed. Even if, it may be otherwise found that she is, still the DHLT would not have simply allowed the appeal without directing the proper cause of action to follow.

In my view, based on the findings, the appellate tribunal would have ordered a retrial upon joining her as a necessary party. What was done defeated a suit by reason of non-joinder of the party. It is as clear as crystal that the position of the law was read upside down. The first ground of appeal has merit.



The succeeding two grounds have to be dealt with together in that upon going through the judgment of the trial tribunal, it is clear to me that members of the village government testified. Among the evidence, it stated that the appellant acquired land from the same village. Documents were tendered and after a full trial, the tribunal visited the suitland. It was established that the same land was previously owned by the village government since it was a gravel mine used by Prison Authorities. It was its finding therefore that the documents tendered which included the receipt and allocation document proved her satisfaction that the land belonged to the appellant. It was clear as well, that the respondent did not produce a deed that he alleged was used to purchase it. In actual fact, the trial tribunal was plain that the respondent had a serious conflict on who the actual owner was because two of the witnesses claimed ownership.

I have no reason to agree with the DLHT that the trial tribunal did not evaluate evidence. In my opinion, the evidence was evaluated and a finding was made. There was no justification, I think, to hold that it did not. Therefore, the second and third grounds as well, have merit.

Lastly, the fourth ground has no merit. The DHLT made a finding that the evidence was not evaluated and believed failure to join the village

government was an incurable irregularity. These two were enough reasons to justify her departure from the opinion of the assessors.

For the foregoing reasons, I allow this appeal, quash the judgment and orders of the DLHT. The decision of the Ward Tribunal is restored. Costs to follow the event.



A handwritten signature in black ink, appearing to be "Ack. Rwizile", is written over a horizontal line.

**ACK. RWIZILE**

**JUDGE**

**27.11.2023**