

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**LAND APPEAL NO. 5 OF 2023**

*(Appeal from the judgment and decree in Land Application No. 17 of 2015 before District Land and Housing Tribunal for Singida at Singida)*

**RAMADHAN KISIU.....1<sup>st</sup> APPELLANT**  
**HASSAN ALLY.....2<sup>nd</sup> APPELLANT**  
**MAJENGO ATHUMANI.....3<sup>rd</sup> APPELLANT**  
**HAMISI YUSUFU.....4<sup>th</sup> APPELLANT**  
**JUMA MLATU.....5<sup>th</sup> APPELLANT**  
**NTANDU MLATU.....6<sup>th</sup> APPELLANT**  
**HAMISI MLATU.....7<sup>th</sup> APPELLANT**  
**NJIKU RAMADHANI.....8<sup>th</sup> APPELLANT**

**VERSUS**

**HAMISI MISAKE.....1<sup>st</sup> RESPONDENT**  
**HADIJA SEIF.....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

*Date of last order: 12/7/2023*  
*Date of Judgment: 11/10/2023*

**KHALFAN, J.**

At the centre of dispute between the parties herein, is a piece of land measuring about 67 acres situated at Mandewa ward (hereinafter referred to as the suit land). The appellants claimed to have acquired the suit land in the years 1975 and 1997 by clearing the virgin land. On the other hand, the



respondents claimed to have acquired the suit land by inheritance from their grandfather namely Seif Misake Msaghaa.

The appellants therefore filed land application No. 17 of 2015 before the District Land and Housing Tribunal for Singida at Singida (hereinafter referred to as the trial tribunal) for an assortment of reliefs against the respondents as follows: declaration that they are the lawful owners of the suit land, the respondents be declared as trespassers on the suit land, permanent injunction restraining the respondents or their agents from interfering the suit land, costs of the suit as well as any other relief which the trial tribunal deemed fit.

It is on record that the respondents raised a counter claim in which they claimed that the suit land belongs to their family and the same was being used after the death of Misake Msaghaa in 1981. Hence, they prayed for an order to be declared as lawful owners of the suit land as well as be compensated of general damages.

After hearing the parties, the trial tribunal dismissed the appellants' case for lack of merits. The counter claim was sustained since the trial tribunal declared the suit land to be the property of the clan of the



respondents. The appellants were aggrieved with the said decision hence they preferred the instant appeal with eight grounds of appeal as follows:

- 1. That, the learned chairman erred in law and in fact by failure to conduct proper procedure during visiting locus in quo and the summing up of the evidence after visiting the locus in quo.*
- 2. That, the learned chairman erred in law and fact by issuing orders before stating reasons as to why the file moved from the previous chairperson.*
- 3. That, the learned chairman erred in law and in fact by failure to evaluate and analyse the evidence that was given by the parties thus reaching unjust decision.*
- 4. That, the learned chairman erred in law and fact by relying on the judgment of the ward tribunal that never declared a winner in the said case, a judgment that lacked legal reasoning.*
- 5. That, the learned chairman erred in law and in fact by declaring the land of the clan of the 2<sup>nd</sup> respondent without a proof that the respondent is a member of that clan or otherwise.*
- 6. That the learned tribunal chairman erred in law by relying on secondary evidence that never followed the procedure of admitting of secondary evidence.*



- 7. That, the judgment and decree are inexecutable since they depended on another judgment that was in favour of another person.*
- 8. That, the learned chairman erred in law and in fact by granting the counter claim without considering the evidence that was adduced by the appellants.*

The appellants therefore prayed that the judgment and decree of the trial tribunal be quashed and set aside.

At the hearing of the appeal at hand, Ms. Salma Mussa, learned advocate appeared for the appellants while Mr. Thadey Lister, learned advocate appeared for the respondents. The appeal was disposed of by way of written submission.

In disposing the appeal before me, I will first determine jointly the fourth and fifth grounds of appeal as they are interrelated.

In those two grounds of appeal, the appellants faulted the trial tribunal for declaring the respondents as lawful owners of the suit land relying on the decision of Mandewa ward tribunal (the ward tribunal) which did not declare any of the party as lawful owner of the suit land. The appellants contended further that; the said decision lacked legal reasoning to be relied upon. To buttress their arguments, the appellants referred to the case of **Michael**



**Mwakalula Njumba & another v. Republic** in which the court referred to the case of **Iddi Mohamed v. Republic** [2005] TLR 365.

The appellants argued further that, although the said decision was never challenged by way of appeal or revision but on its face, it cannot be relied upon by the court of competent jurisdiction.

The appellants argued further that, the suit which was instituted before the ward tribunal was against two persons namely Hamisi Misake and Hadija Sefu. They argued that Hamisi Misake passed away and thus the suit against him abated. They maintained that the suit before the trial tribunal was against the respondents and not the whole clan of Msaghaa. The matter before the ward tribunal was between Juma Hango Msaghaa and one Ramadhani Kisiu.

In reply, the respondents maintained that it is not true that the trial tribunal decided the matter basing on the decision of the ward tribunal. The trial tribunal evaluated the evidence of both parties and came to the conclusion that the appellants failed to prove their claims. The respondents argued further that the decision of the ward tribunal cannot be challenged at this stage as the trial tribunal was the proper forum to challenge the said decision.



On further submission, the respondents argued that they filed a counter claim against the appellants as administratrix of the estate of the late Misake Msaghaa while before the ward tribunal, Juma Hango filed a case against the first appellant on behalf of Msaghaa clan.

In rejoinder, the appellants essentially reiterated their submission in chief.

I have carefully gone through the parties' rival submissions and in support of the fourth and fifth grounds of appeal.

My starting point will be the contention by the appellants in their submission that after the demise of the first respondent, the suit against him abated.

Going by the record, it is revealed that the first respondent died since 2019. While the appellants maintained that the suit against him abated, the record does not state so. This is revealed on page 2 of the typed judgment on the last paragraph which partly reads:

*"...mjibu maombi no. 1 alifariki 20/1/2019 na mpaka kufikia 12/11/2021 hakuna msimamizi wa mirathi aliyekuja kuendelea na shauri ndipo baraza hili lilitoa **amri ya kuendelea shauri hili upande mmoja dhidi ya mjibu maombi no. 1...**"* [Emphasis added].



The above quotation extracted from the trial tribunal's judgment shows that the matter did not abate against the first respondent rather it proceeded *ex parte* against him. In other words, the matter before the trial tribunal proceeded *ex parte* against the deceased's party. Equally, this appeal has been filed against the deceased's party.

By proceeding with the matter *ex parte* against the first respondent who was deceased, the trial tribunal embarked on serious illegality. There could be no meaningful decree which could be passed in favour of a non-existing party.

Equally, Mr. Lister argued that the respondents filed a counter claim against the appellants as administratrix of the estate of the late Misake Msaghaa. I have keenly gone through the record; it is revealed that on 12/11/2015, the trial tribunal ordered the appellants (applicants therein) to amend the application so that the second respondent herein who was not a party thereto would be joined as a party. The order specifically required the respondents to be sued in a capacity as administrators of estate of the late Misake Msaghaa.

I have traced the record; the amendments were done but the respondents were not sued in their capacity as administrators of the

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deceased's estate rather they were sued in their personal capacity as they appear in this appeal. To this, the trial tribunal was enjoined to immediately strike out the application for failure to comply with its orders.

In the case of **Shaban Amuri Sudi (the administrator of the estate of the late Amuri Sudi v. Kazumari Hamis Mpala** Land Application No. 30 of 2019 (unreported), this court pointed out that:

*"Court orders must be respected, obeyed and complied with religiously. Likewise, court proceedings are controlled by the presiding judge or magistrate, parties cannot decide to do contrary to the court order. Tolerating them will amount to voluntary invitation to judicial chaos, disrespect and injustice."*

Even the arguments by Mr. Lister that the second respondent filed the counter claim as administratrix of the deceased's estate is not supported by the record.

It follows therefore that since the matter proceeded *ex parte* against the first respondent who was the deceased, and the failure to implead the second respondent in a capacity as administratrix of the estate of the late Misake Msaghaa; was a serious inexcusable omission which could lead to injustice and non-executable decree. See the decision in **Abdullatif**





**Mohamed Hamis v. Mehboob Yusuf Osman & another** Civil Revision  
No. 6 of 2017 Court of Appeal of Tanzania at Dar es Salaam (unreported).


With those glaring omissions, the matter before the trial tribunal was marred with serious irregularity hence the same is rendered a nullity. It is therefore not necessary to discuss the remaining grounds particularly whether the trial tribunal properly analysed the evidence on record and the relevance of the decision of the ward tribunal which heavily relied upon by the learned trial Chairman to make the decision.

Consequently, by virtue of the powers of revision bestowed to this court by section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E 2019], I proceed to nullify the proceedings and judgment of the trial tribunal. As to the way forward, any interested party may file a fresh case before the court of competent jurisdiction. In the circumstance, each party shall bear its own costs.

It is so ordered.

**Dated at Dodoma** this 11<sup>th</sup> day of October 2023



  
**F. R. KHALFAN,**  
**JUDGE**