

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND APPEAL NO.12 OF 2023

(Arising from the Decision of the District Land and Housing Tribunal for Kilombero, at Ifakara in Land Appeal Case No. 96 of 2020; Originating from the Judgment of Kidatu Ward Tribunal, in Land Case No. 39 of 2019)

BETWEEN

BENARDINA MACHEYO.....APPELLANT

VERSUS

PASKALINA MACHEYO..... RESPONDENT

JUDGMENT

20th Dec, 2023

CHABA, J:

This second appeal originates from the decision of Kidatu ward tribunal in Land Case No. 39 of 2019 delivered on the 23rd April, 2020. In its judgment, the trial ward tribunal (the trial tribunal) declared the respondent, Paskalina Macheyo as a lawful owner of un-surveyed parcel of land with a size of 16 meters and 20 centimeters with four equal straight sides, located at Nyamde area in Chikago village, at Kidatu ward within the district of Kilombero in Morogoro region.

At the height of full trial, the trial ward tribunal held that, the respondent lawfully purchased the disputed parcel of land way back in 2004, and the appellant herein, Benardina Macheyo was declared a trespasser and further that had no right



on the same because she witnessed the sale agreement on the material date. According to the records, the decision of the trial ward tribunal which prompted the appellant to knock the door of the District Land and Housing Tribunal for Kilombero/Ulanga at Ifakara (the DLHT or first appellate Tribunal) and this court (second appellate court) by way of appeal, as exhibited and reflected on page 8 of the hand written judgment, it read:

"Baraza linatoa haki kwa mdai kwasababu amenunua kisheria na mdaiwa hana haki kwasababu alikuwepo kwenye ununuzi huo. Hivyo basi, kuanzia leo tarehe 23/04/2020 baraza linatambua kuwa haki ni ya mdai na mdaiwa hana haki."

Aggrieved by the decision, the appellant, Bernadina Macheyo preferred an appeal to the DLHT via Land Appeal Case No.96 of 2020, delivered on 25th March, 2022 but again she lost, hence the present appeal. As reflected on page 8 of the typed copy of judgment, the first appellate tribunal observed that:

"Baada ya kupitia sababu zote za rufaa nami nakubaliana na washauri wawili wa baraza niliokaa nao kwenye rufaa hii, waliosema rufaa haina mashiko. Kwa kuhitimisha, rufaa hii haina mashiko na inatupiliwa mbali kwa gharama".



Still aggrieved, Benardina Macheyo has approached this court in a second bite by way of petition of appeal lodged in this court on 16th May, 2022. The petition of appeal comprises of five (5) grounds of appeal. But for consistence flow of the events, I will reproduce them shortly.

For better appreciation of the matter before this court and making the issues involved clear, I find it apt to first give a brief factual background of the matter that crystalized the instant appeal. As gathered from the records of the trial ward tribunal, the appellant, Benardina Macheyo and respondent, Paskalina Macheyo as their names suggests, are close relatives. The central dispute between these two relatives concerns a parcel of land measuring 16 meters and 20 centimeters with four equal straight sides which the respondent believes that she legally bought it from Bernard Macheyo, now the deceased, on 30th September, 2004; while the appellant alleges that the disputed parcel of land belonged to his late father and she is the administratrix of the estate of her late father.

At the time she commenced the matter at the trial ward tribunal, the respondent, Paskalina Macheyo who believed that she was a lawful owner of the land in dispute, she claimed that the respective area had trees which was destroyed later by the appellant. According to the evidence on records, the sale agreement or contract of sale was concluded after the respondent effected the payment of TZS. 130,000/= and further that, the same was witnessed by other



five (5) witnesses namely; Evance Macheyo, Bernadina Masheyo (appellant herein), Dematusi Njahame, Rodwiki Mchanga and Aidani Kapinga.

At the hearing of the matter before the trial ward tribunal, the appellant testified that after the death of her father, the late Bernard Macheyo, she was appointed to administer the estate of the deceased and she became an administratrix of the estates of her late father on behalf of all lawful heirs. However, upon examining the records at trial, the same are silent because the appellant did not disclose such vital information and further that, did not state or mention the names of the court, it appointed and granted her administrator-ship. While these vital facts were unclear at trial, on her part, the respondent, Paskalina Macheyo and the buyer of the disputed parcel of land, told the trial ward tribunal that after she had bought the said land, she made substantial developments thereon including construction of a building having four-rooms which was later destroyed by the appellant.

Based on the above historical background, the appellant preferred the present appeal relying on the following grounds of appeal:

- 1. That, the District Land and Housing Tribunal being the first appellate tribunal erred in law and facts for its failure to re-evaluate and properly assess the evidence adduced before Kidatu Ward Tribunal, henceforth come up with wrong decision by upholding the decision of the trial Tribunal*



2. *That, the District Land and Housing Tribunal being the first appellate tribunal erred in law and facts to uphold the decision of the trial Tribunal despite that the proceedings of the trial Tribunal were tainted with irregularities for want of signatures of the Tribunal members who presided the matter.*
3. *That, the District Land and Housing Tribunal erred in law and facts for its failure to record the opinion of assessors.*
4. *That, the District Land and Housing Tribunal being the first appellate tribunal erred in law and facts to uphold the decision of the trial Tribunal despite of the defect of non-joinder of necessary party one Benard Macheyo.*
5. *That, the District Land and Housing Tribunal erred in law and facts to decide the matter in favour of the respondent despite of her failure to prove the case to the required standards.*

Relying on the above grounds of appeal, the appellant prayed the court to allow the appeal, quash the proceedings of the lower tribunals and set aside the judgment, decree and any other orders issued by both lower tribunals. Moreover, the appellant craved this court to declare her as the lawful owner of the disputed parcel of land and the respondent be condemned to pay costs of this appeal and lower tribunals.

Generally, the respondent, Paskalina Macheyo through her reply to the petition of appeal, vehemently disputed all grounds of appeal fronted by the



appellant, and supported the decisions of both the trial ward tribunal and first appellate tribunal. She further urged the court to dismiss the appeal with costs and uphold the decision of the first appellate tribunal. Also, she prayed the court to order that, the costs of this appeal and lower tribunals be borne by the appellant.

Besides, both parties through their respective pleadings, prayed the court to issue any other orders where the interest of justice so demands.

At the hearing of the appeal, both parties agreed to argue and dispose of the appeal by way of written submissions. The appellant was represented by Mr. Kassian Karsian Matungira, Learned Advocate from Ifakara Kilombero while the respondent appeared in person, and unrepresented. Both parties complied with the court's scheduled order.

Before going any further, the counsel for appellant, Mr. Kassian opted to drop the 3rd and 5th grounds of appeal, and submitted only on the 1st, 2nd and 4th grounds of appeal. Submitting in support of the 1st ground, on failure of the first appellate tribunal to re-evaluate the evidence adduced before Kidatu ward tribunal, Mr. Kassian argues that the DLHT erred in law and fact for upholding the decision of the trial ward tribunal in favour of the respondent while the evidence given by the respondent, as reflected on the proceedings were contradictory. Mr. Kassian submitted further that, the respondent brought two witnesses to support her



testimony. He averred that, those two witnesses are Rodrick Mchanga and Evansi Macheyo. He added that, the evidences of these witnesses recorded on 2nd day of January, 2020 are unclear and shows that there were contradictions on the respondent's witnesses' evidences.

He submitted that, the respondent's witness one Rodrick Mchanga (PW1) told the trial ward tribunal that, when the exercise of measuring the disputed parcel of land and making the relevant description for identification ended, the respondent moved away without signing the sale agreement and promised that, could come back and append her signature. The counsel argues that, the evidence of PW1 shows further that, the suburb (Kitongoji) Chairperson did not sign the sale agreement on that particular date/day as he similarly left the place prior signing of the sale agreement but prayed to sign it later. He maintained that, even the evidence of PW1 was shaken during cross-examination by DW1, as the respondent continued to admit that, she did not sign the sale agreement. He further highlighted that, the testimonies given by PW1 and PW2 contradicted each other. He said, in cross-examination by DW1, PW2, Evansi Macheyo stated that the suburb (Kitongoji) Chairperson did sign the sale agreement. For ease of reference, I find it apt to reproduce what transpired at the trial. It read:

"DW1: Je, unauhakika kuwa kwenye eneo uliloongea mdaiwa alikuwepo na alisaini?: PW1: "Hakusaini".



"DW1: Ndugu shahidi, wahusika wote wanatakiwa kusaini kwa pamoja au kila mtu na muda wake? **PW2: Wasaini pamoja.**"

"DW1: Je, hiyo karatasi ya Mauzo M/kiti wa Kitongoji alisaini au hokusaini?
PW2: Alisaini."

Mr. Kassian concluded that, the above noted contradictions are fatal, and the first appellate tribunal ought to have been decided in favour of the appellant herein. Mr. Kassian invited this court to decide in favour of the appellant on the ground that, evidence given by the respondent was weak and uncorroborated.

As regards to the 2nd ground, Mr. Kassian argues that the proceedings of the trial ward tribunal were tainted with irregularities, hence contravened the law. He averred that, such proceedings were not signed by the members of the trial ward tribunal while the law puts a mandatory requirement that the proceedings must be signed and dated. He stressed that, the same were not signed. He concluded that, the first appellate tribunal ought to have nullified the proceedings instead of upholding the judgment and decree of the trial ward tribunal.

Concerning the 4th ground, Mr. Kassian argues that, it was necessary to join the seller of the land in dispute on the ground of being a necessary party. He argues that, his presence could enable the trial ward tribunal to have detailed evidences in respect of the sale transactions between the respondent and the seller, Bernard Macheyo. He said, failure to sue or summon the seller of the land



in dispute and join him as the necessary party to the matter at hand was fatal. He asserted that, the crucial question to be determined by the court is whether failure to join the necessary party one Bernard Macheyo (now the deceased) in the trial proceedings was fatal or not. To buttress his contention, Mr. Kassian cited the case of **Juma B. Kadala v. Laurent Mkandae [1983] T.L.R 103**, where this Court held *inter-alia* that: -

"In a suit for the recovery of land sold to a third party, the buyer should be joined with the seller as the necessary party defendant; non joinder will be fatal to the proceedings".

He further cited the case of **National Housing Corporation Vs. Tanzania Shoes Company and Others, [1995] T.L.R 215**, wherein it was held that:

"Since the trial commenced and continued in absence of a necessary party, the court proceeded without authority and that constituted a major defect which went to the roots of the trial thus rendering the proceedings null and void."

Guided by the above authorities, Mr. Kassian argues that, it was the duty of the trial ward tribunal to issue necessary orders as to the joinder of the necessary



party (Benard Macheyo) who sold the land in dispute to the respondent (Paskalina Macheyo).

In the light of the above submission, Mr. Kassian invited this court to nullify the proceedings of the lower tribunals and set aside the judgments, decree and any other orders emanated therefrom with costs.

Responding to the appellant's submission, the respondent, Paskalina Macheyo generally opposed the present appeal and strongly supported the decisions of the lower tribunals. She stressed that, the DLHT being a first appellate tribunal, correctly assessed and re-evaluated the evidences on records. She further highlighted that, grounds 1, 2 and 4 were all misconceived by the appellant, hence lacks merit. She strongly invited this second appellate court to dismiss the instant appeal with costs. To reinforce and support her argument, Ms. Paskalina submitted that, this being the second appellate court, in law cannot disturb the concurrent findings of facts made by the trial ward tribunal and the DLHT, unless there are misapprehensions of evidence or violation of the principles of law. She referred this court to the case of **Amratlal Damandar Maltser t/a Zanzibar Silk Stores v. A.H. Jariwala t/a Zanzibar Hotel [1980] T.L.R 31**, to fortify her argument.

Coming to the 1st ground of appeal, respondent submitted generally that, at this juncture the appellant cannot challenge the sale agreement because the evidence adduced before the trial ward tribunal shows that, she bought the land



in dispute from Bernard Macheyo and the sale transaction was witnessed by other family members including the appellant. She stated that, it was the duty of the appellant to bring Bernard Macheyo before the trial ward tribunal as her witness to disprove that, indeed there was no sale transaction made between the parties to this case. She averred further that, the appellant was duty bound to bring or summon the owner or seller of the disputed suit land to appear before the trial ward tribunal to disprove the fact that no sale agreement was made, as she is the one who alleged that the parcel of land in dispute did belong to her father.

Reacting to the 2nd ground of appeal, which touches the issue of irregularities caused by the members who constituted the trial ward tribunal for failure to sign the proceedings, the respondent, Ms. Paskalina highlighted that there is no such mandatory requirement for members to sign the proceedings of every sitting, but judgment only. To support her position, she cited the decision of this court in the case of **William Mahengela v. Cosmas Mwandole Land Appeal No. 103 of 2019**, (HC-DSM)(unreported), whereby it was held that:

"There is no law which mandatorily requires members of the Ward Tribunal to sign every day in the proceedings of Ward Tribunal. What the law requires is for the members of the Ward Tribunal to sign the judgment."



Replying on the 4th ground which touches the issue of non-joinder of the necessary party (Bernard Macheyo), it was the respondent's contention that, since the appellant did not raise such an argument before the trial ward tribunal and instead thereof, she opted to agree and proceeded with the case to its finality, she is barred to raise and argue the same before this second appellate court. She said, since the appellant did not object the sale agreement which bears the names of Bernard Macheyo as evidence during hearing of the matter at the trial ward tribunal; the appellant cannot dispute the same document on appeal. She concluded that, like other grounds of appeal, this ground also has no legs to stand.

To wound up her submission coupled with the authorities to support her stance, the respondent prayed the court to dismiss the appellant's appeal with costs for reasons that, it has no merits, and further prayed the court to sustain the decisions of the first appellate tribunal.

In a brief rejoinder, the counsel for the appellant had nothing useful to add but was of the opinion that, the respondent's submission did not respond to the appellant's grounds of appeal. He emphasized that, the DLHT being the first appellate tribunal failed to exercise its powers vested to it on making re-evaluation of the evidences adduced before the trial ward tribunal, hence led a miscarriage of justice on the appellant's party. He insisted that, the seller of the land in dispute (Bernard Macheyo) was supposed to be joined as party of the proceedings at trial. He said, failure to join and call him as a witness left the appellant with some sort



of questions that had no answer, hence the defect is considered as fatal. He concluded by reiterating his prayers that, this appeal be allowed with costs and the proceedings of both lower tribunals be quashed and the judgments, decree and any other orders be set aside.

Having summarized the parties' submissions and dispassionately considered the rival arguments from both sides, and further considered the court records and the appellants' grounds of appeal, the issue calling for consideration and determination is, whether this appeal has merits or otherwise.

However, before I dwell on the grounds of appeals and submissions made by the parties for and against the instant appeal, I am mindful that this being a second appellate court, as a general, cannot interfere with the concurrent findings of the two lower tribunals or courts. It is trite law that, interference is permissive where the second appellate court is satisfied that, there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure caused by the two tribunals or courts below. In the case of **Amratlal Damandar Maltser t/a Zanzibar Silk Stores Vs. A.H. Jariwala t/a Zanzibar Hotel [1980] T.L.R 31**, the CAT held *inter-alia* that: -

"Where there are two concurrent findings of facts by two Courts, the Court of Appeal, as a wise rule of practice should not disturb them unless it is clearly shown that, there has been



a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure."

Further, it is settled law that, court records are a serious document and it is presumed that, the same accurately represent the truth of what actually transpired at trial, thus, it should not be lightly impeached. This principle was underscored by the CAT in the case of **Halfan Sudi v. Abieza Chichili** [1998] T.L.R 527, wherein the Court observed that:

"We entirely agree with our learned brother, MNZAVAS, JA, and the authorities he relied on which are loud and clear that; A Court record is a serious document. It should not be lightly impeached. There is always the presumption that a court record accurately represents what happened."

Having revisited and highlighted the principles of law which I believe that will guide me in the course of determination of the present second appeal and finally land safely to the final verdict; I will commence my determination with the 1st ground of appeal.

On this ground, the counsel for the appellant claimed that, the trial Chairperson erred in law and fact upon failing to re-evaluate the evidence adduced before Kidatu ward tribunal. He averred that, the DLHT erred in law and facts when it upholds the decision of the trial ward tribunal which ended in favour of the



respondent, while the respondent's evidences as reflected in the proceedings of the trial ward tribunal contradicted each other. He argues that, the evidences given by Mr. Rodrick Mchanga and Evansi Macheyo and recorded on the 2nd day of January, 2020 contradicted each other on the sale agreement or contract on whether the same was signed by the appellant or other witnesses, or wasn't signed. During cross-examination, Rodrick (PW1) appears to deny the fact that, the respondent did not sign the sale agreement. And Evansi Macheyo (PW2) seems to give an opposite position as he agreed that the respondent signed the sale agreement and other witnesses also signed on the same day. On her part, respondent submitted that, the evidences on record are clear that the sale agreement which was tendered in evidence as an exhibit, it was signed by the respondent and other witnesses who attended at the *locus in quo*. Ms. Paskalina had a strong view that, the appellant cannot sleep on the above pretext to justify ownership of the disputed land as this ground was raised and determined in the first appellate tribunal.

In order to appreciate whether this ground was raised and determined in the first appellate tribunal, it is important to revisit the pleadings and proceedings of both the trial ward tribunal and the DLHT. The records of the DLHT shows that, on 4th June, 2020 the appellant lodged her petition of appeal via Land Case No. 96 of 2020 at the DLHT for Kilombero, and the first ground was based on failure of



the trial ward tribunal to evaluate and analyse the evidences tendered before it during the hearing. It read:

"That the trial ward tribunal failed to analyse, evaluate and assess the evidence adduced before it henceforth came up with wrong conclusion rendering a failure of justice."

The records of the first appellate tribunal reveal further that, on 5th October, 2021, the appellant herein through the legal services of Mr. Sikujua Funuki, learned advocate amplified the above ground of appeal by way of written submission on page 3 of the written statement of defence where he averred that:

"With respect to the 1st ground of appeal, the respondent's witness one Rodrick Mchanga testified that two persons who were witnesses to the contract did not sign the contract on the date alleged that the sale was concluded and it includes the hamlet chairperson without any tangible reasons. It follows that the non-signing of the contract was not witnessed as per the law. Hence the said contract relied by the trial tribunal in making its judgment falls short of contractual requirements".

In attempting to answer and resolving the above ground of appeal, the first appellate tribunal on page 7 of the typed copy of judgment concluded that:



"Pande zote mbili zilipewa fursa sawa yakuleta ushahidi kwenye baraza la kata ili kuthibitisha au kukanusha madai na wote walifanya hivyo. Ushahidi uliotolewa na upande wa Mrufaniwa uliweza kuthibitisha kwamba alipata eneo gombewa toka mwaka 2004 na amekuwa kwenye miliki ya eneo hilo takribani miaka 15 bila usumbufu wowote. Kwa jinsi hiyo Mrufani wa aliweza kuthibitisha kwamba alipata kihalali eneo gombewa na mrufani ni mvamizi kwenye eneo hilo."

On this second appeal, the appellant once again raised similar issue complaining that, the DLHT failed to analyse and re-evaluate the evidences in respect of the first ground. His grievances are exhibited on ground 1 of her petition of appeal as follows: -

- 1. "That, the District Land and Housing Tribunal being the first appellate tribunal erred in law and facts for its failure to re-evaluate and properly asses the evidence adduced before Kidatu ward Tribunal, henceforth come up with wrong decision by upholding the decision of the trial tribunal".*

In this second appellate court, the appellant's complaint centred on the testimonies given by PW1, Rodrick Mchanga; PW2, Evansi Macheyo and DW1,



Bernadina Macheyo (respondent). The counsel for the appellant quoted the following excerpt from the proceedings of the trial ward tribunal, to wit:

"DW1: Je, una uhakika kuwa kwenye eneo uliloongea mdaiwa alikuwepo na alisaini? PW1: "Hakusaini". "DW1: Ndugu shahidi, wahusika wote wanatakiwa kusaini kwa pamoja au kila mtu na muda wake? PW2: Wasaini pamoja." "DW1: Je, hiyo karatasi ya Mauzo M/kiti wa Kitongoji alisaini au hakusaini? PW2: Alisaini".

On reviewing the proceedings of the Kidatu ward tribunal, I did not find any part of the proceedings read the way the appellant quoted hereinabove. There is nowhere in the proceedings of the trial tribunal or judgment the appellant was referred to as DW1 and the witnesses referred to as PW1 and PW3....PW4 ...PW5.... etc. I have further revisited the proceedings of the DLHT and I have found nowhere the Hon. Chairperson recorded the proceedings of any witness as PW1, PW2 or DW1. Since what was referred to by the appellant in this second appeal do not reflects what transpired before the lower tribunals, at this stage, this court is estopped to deal with matters that are neither reflected in the proceedings of the trial ward tribunal nor raised at the first appellate stage. It is common ground that, matters that were not pleaded at the first place in court cannot be raised and considered in appellate stage. Even if it can be assumed that the proceedings of



the trial tribunal and the DLHT carries what the appellant intends to suggest, but the truth is that, since the issue of assessment and re-evaluation of evidences was done by the first appellate tribunal, this court cannot not deal with the same ground at this second appeal stage. In view of the above findings, I hold that the appellant's first ground of appeal is devoid of merit, hence dismissed.

On the 2nd ground of appeal, I am afraid that in solving the same, I will not use much time and energy. In his submission, Mr. Kassian submitted that failure by the members of the trial ward tribunal to sign the quorum in the proceedings at every seating is incurably fatal, hence renders the whole proceedings and judgment to be a nullity from abinitio. In reply, respondent stated that there is no law which is couched in mandatory terms requiring the such members to append their signatures or sign the proceedings of the trial ward tribunal. However, it is on records that, this 2nd ground of appeal was raised as 3rd ground before the first appellate tribunal and accordingly, was dealt with and determined. The petition of appeal filed by the appellant at the DLHT for Kilombero, read:

"3. That, the proceedings of the trial ward tribunal is null and void for want of signature of members who presided over the suit."

It is on records that, what Mr. Sikujua Funuki, learned advocate submitted on 5th October, 2021 on behalf of the appellant in support of the above ground of



appeal before the DLHT, is exactly as to what the Mr. Kassian submitted in this court on behalf of the same appellant on 20th March, 2023 in support of ground two of the appellant's appeal. For ease of reference, ground two of the appellant's petition of appeal read as follows:

2. *"That, the District Land and Housing Tribunal being the first appellate tribunal erred in law and facts to uphold the decision of the trial tribunal despite that the proceedings of the trial tribunal tainted with irregularities for want of signatures of the tribunal members who presided the matter".*

In its judgment, upon considering the above ground of appeal in line with the evidences adduced at trial, the first appellate tribunal resolved it in favour of the respondent based on the evidence on records and the case laws. He reasoned that, failure to indicate and append signatures of the members in the trial proceedings does not go to the root of the case and did not render any injustice on the part of the appellant. Part of the impugned judgment read:

"Kwa upande wa sababu ya tatu, wakili wa mrufani alisema mwenendo mzima wa baraza la kata ni batili kwa kutokuwa na sahihi za wajumbe wa baraza waliosikiliza shauri hilo. Kutokuwa na sahihi kwenye akidi ya wajumbe wa baraza la kata ni dosari lakini dosari hii haina madhara makubwa



yanayoenda kwenye kiini cha uamuzi uliofikiwa na baraza la kata, maana kwenye uamuzi sahihi za wajumbe hao zipo”.

With the above findings of the first appellate tribunal, I fully subscribe to it. As correctly submitted by the respondent, there is no law which requires members of the ward tribunal to sign the proceedings of every sitting, but the law only compels the members from the ward tribunal to sign the judgment. Respondent referred this court to the case of **William Mahengela Vs. Cosmas Mwandole Land Appeal No. 103 of 2019** (supra) wherein this Court observed that:

“There is no law which mandatorily requires members of the Ward Tribunal to sign every day in the proceedings of Ward Tribunal. What the law requires is for the members of the Ward Tribunal to sign the judgment.”

From the foregoing, and being guided by the principles explicated by the Court through the authorities cited hereinabove and the decision of the Apex Court of the Land in **Amratlal Damandar Maltser t/a Zanzibar Silk Stores Vs. A.H. Jariwala t/a Zanzibar Hotel [1980] T.L.R 31** (supra), wherein the Court of Appeal enunciated that,

“Where there are two concurrent findings of facts by two courts, the Court of Appeal, as a wise rule of practice should not disturb them unless it is clearly shown that, there has been



a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure”.

In another case of **Samwel Kimaro Vs Hidaya Didas, Civil Appeal No. 271 of 2018** (unreported), the Court of Appeal held *inter-alia* that:

"Nonetheless; both the trial Tribunal, after hearing the evidence ruled that the appellant had knowledge and the High Court, after reviewing the evidence of the trial Tribunal arrived at the same conclusion that the appellant was aware of rent increase. As such the question whether the appellant was notified orally or through formal written notice, is purely based on facts and not law. This being a second appeal, we refrain in interfering with lower courts concurrent findings of fact."

In view of the above findings and reasoning, it is my considered view that, this ground of appeal has no merit and the same deserves to be dismissed in its entirety.

Now, coming to the 4th and last ground of appeal, it is pertinent first to revisit the ground itself. Basically, the appellant complaint is on the failure by the trial ward tribunal to join the necessary party, one Bernard Macheyo. I have carefully scrutinized the lower tribunals records and noticed that, this ground of appeal was raised and decided by the first appellate tribunal. Parties' pleadings show clearly



that, on 4th June, 2020 the appellant through her petition of appeal raised a similar ground revolving around the issue of non-joinder of necessary party in her second ground of appeal as hereunder shown:

"2. That, the trial ward tribunal erred at law and fact to sue the appellant in her own capacity while it is clearly known that the appellant is the administrator of the estates of the late Bernard Macheyo who was the lawful owner of the disputed land."

In her written submission before the DLHT in support the above ground of appeal, Mr. Sikujua Funuki on behalf of the appellant after citing the case of **Zuleia Katunzi and Others v. Tanzania Ports/Habours Authority, Civil Appeal Case No. 123 of 2019** (unreported), which indicates that failure to sue the administrator or executor of the deceased's estate renders the suit incompetent. The counsel submitted that, the appellant was wrongly sued in her own capacity while the suit land is the property of her late father, and the consequences of such a defect is nullification of the impugned judgment. However, the respondent vehemently opposed this ground stating that, the appellant did not tender any evidence before the trial ward tribunal to prove that, she was appointed as an administratrix of the estate of the Late Bernard Macheyo. That is why she decided to sue the appellant on her personal capacity as a trespasser. Based on the



respondent's submission, facts and reasoning, the DLHT positively ruled in favour of the respondent. In particular, the DLHT observed that:

"...Kwa mjibu wa sababu hii ni ukweli usiopingika kwamba mrufani hakuwahi kutoa hati ya usimamizi wa mirathi kama kielelezo barazani..."

Looking at the appellant's submission, I have noticed that at this stage, the appellant appears to change her story. As garnered from the court records, the appellant has raised the issue of non-joinder of necessary party, which in my understanding it means that, since she failed to tender the documentary evidence (letters of the Administration of the Estate of the Late Bernard Macheyo) before the trial ward tribunal, right now she is claiming that the said Bernard Macheyo was supposed to be joined at the trial as a necessary party.

On her part, the respondent averred that, since it is the appellant who claims that she was appointed for the post as an administratrix of the estate of the deceased, Bernard Macheyo, therefore she was supposed to prove such a fact that, her father had passed away and she was dully appointed to administer the disputed suit land. On this facet, not only the appellant had to mention the appointing court, but also was duty bound to produce in evidence a documentary exhibit to back up his statement.



To resolve the issue in controversy, I had an ample time to scan the records, and found that the proceedings of the trial ward tribunal is full of no doubt that, the appellant herself testified that, following the demise of her father she sought and appointed by the primary court to be an administratrix of the estate of the late Bernard Macheyo on behalf of other heirs. For ease of reference, I find it apt to reproduce an excerpt from her testimony as follows:

"Ninachofahamu mimi alipofariki marehemu baba yetu Bernard Macheyo aliacha mke na watoto watano, kati ya hao watoto watano, mtoto 1 alikuwa ni wa mama mwingine..... baada ya hapo tulirudi na barua tukaipeleka Mahakamani kwa kuidhinisha na Mahakama iliridhika kuwa mimi ndiye msimamizi wa mali hizo".

As depicted from the above proceedings of the trial ward tribunal, the appellant cannot direct his complaint to the trial ward tribunal for failure to order that, the deceased one Bernard Macheyo had to be joined at trial as a necessary party. In similar way, the appellant cannot complain against the first appellate tribunal that its finding on this facet was irregular. As the records speak for itself, it is clear that at the material time the appellant was aware of the whereabouts of her father (Bernard Macheyo). It is my findings that, one cannot allege that his or her father is dead and at the same time invites the court to call the deceased (may be upon resurrection) to appear and prosecute or defend his case. In my



view, if this may be allowed by the courts of law; truly will open a Pandora's Box that will generate many complicated problems; the resultant of which will also render misuse of the court's precious time and resources as well.

Again, I find the 4th ground of appeal is deficiency of merit, and the same qualifies to be dismissed.

In view of what I have endeavored to deliberate in details hereinabove, I find no reasons to fault the decisions of the District Land and Housing Tribunal for Kilombero, at Ifakara (first Appellate Tribunal) which is now upheld. Accordingly, I find no merits in this appeal and I proceed to dismiss it with costs. It is so ordered.

DATED at **MOROGORO** this 20th day of December, 2023.



M. J. Chaba
JUDGE
20/12/2023

Court:

Judgement delivered under my Hand and Seal of this Court in Chamber's this 20th day of December, 2023 in the presence of the Appellant who appeared in person, and unrepresented and in the absence of the Respondent.


E.C. LUKUMAI

Ag. DEPUTY REGISTRAR

20/12/2023



Court:

Rights of the parties to appeal to the CAT fully explained.


E.C. LUKUMAI

Ag. DEPUTY REGISTRAR

20/12/2023

