

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

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**LAND APPEAL NO. 89 OF 2023**

*(Arising from the Land Application No. 17 of 2015 of the District Land and Housing Tribunal for Babati at Babati)*

**KHATIBU JUMANNE .....APPELLANT**

*VERSUS*

**1. ELIZABETH SAPA .....  
2. SIMON MESIAKI .....  
3. TASAY MAYO .....** } **RESPONDENTS**

**RULING**

*21<sup>st</sup> March and 17<sup>th</sup> May, 2024*

**MIRINDO, J.:**

Khatibu Jumanne appeared twice before Babati District Land and Housing Tribunal, as Khabibu Jumanne, for the recovery of possession of a portion of land. The first proceedings took place between 2004 and 2007 and the appellant was successful. Those proceedings came to this Court by way of appeal in and

Appeal No 21 of 2007 and this Court quashed the proceedings and ordered a trial *de novo*. That was on 25/10/2012. However, the retrial did not take place and the appellant filed fresh proceedings in 2015. In his 2015 pleading, the appellant sought to be declared lawful owner of a portion of land measuring approximately six acres situated at Manyara Village, Babati District in Manyara Region which the respondents had since 2002 invaded through cultivation. Besides, he prayed for an order of permanent injunction against the respondents and their agents, general damages and costs.

The first and second respondents lodged their respective written statements of defence pleaded that on 30/10/2002 twelve villagers, including the appellant and the respondents were allocated three acres of land and that they had not invaded the suit land. In their respective written statements, they also raised preliminary points of objection on mis-joinder. At the commencement of the trial, the Tribunal overruled the first and second respondents' preliminary objections and continued with the hearing.

The trial proceeded *ex parte* against the third respondent who did not enter defence.

At the trial, the appellant testified that he was allocated eight acres of land in 1992 by Magara Village Council which was by then a bush. He cleared it and prepared it for cultivation. He narrated that in 2002, the respondents invaded the

suit land and cultivated 4 ½ acres of his 8 acres of land. He unsuccessfully tried to settle the dispute through village leaders and the Babati District Commissioner. Juma Athumani Tita, a member of the Village land allocation committee in 1992 supported the appellant's case. The third appellant's witness was Kassimu Jumanne, resident of Manyara Village since 1987. He testified being among persons who were accorded eight acres of land in 1992. In 2002 he was a ten-cell leader and witnessed the respondents trespassing into the appellant's land. The only witness for the respondents was Elizabeth Sapa. She testified that in 2002 she was among several persons who were allocated three acres of land by a village assembly.

The presiding Chairman noticing that the first respondent who was also a witness was unrepresented, directed her to tender in evidence certain documents attached to her written statement of defence. The Tribunal adjourned cross-examination for the purpose of allowing the first respondent to produce those documents. On the date adjourned for hearing to 17/11/2021, both parties were absent. The Tribunal adjourned hearing to 18/11/2021 but when parties met on that day the respondents were present but the appellant's counsel was absent with notice. The Tribunal informed the parties that the proceedings have been called for revision by the High Court and stayed the hearing.

The hearing resumed on 9/1/2023 after the High Court struck out the application for revision on 29/9/2022. The file came before a new chairman with a new set of assessors. Parties were supposed to appear on 7/2/2023 but they appeared on 3/3/2023. However, the appellant's counsel was absent and hearing was adjourned to 17/4/2023 and on the adjourned date the appellant and the first respondent were present. The second respondent was absent. Hearing was adjourned to 11/5/2023 then to 14/6/2023. On that latter date the appellant's counsel was present but both respondents were absent and hearing was adjourned to 7/8/2023 and then to 5/9/2023. On 5/9/2023, the appellant and the first respondent were present but the second respondent was absent. On this date, the appellant's counsel informed the Tribunal that:

Shauri ni la utetezi na mjibu maombi wa kwanza alishaleta bado mjibu maombi wa pili ambaye hayupo na hakuna taarifa.

The first respondent stated she had no information about the second respondent.

Upon this information, the Tribunal closed the defence case and adjourned the case to 7/9/2023 for reading of assessors' opinions. As the opinions were not forthcoming, there were several adjournments, that is to 28/9/2023; 9/9/2023; 18/10/2023 and 16/11/2023. On 16/11/2023 the opinions were not

read out and the Chairman set 23/11/2023 as the date for assessors' opinions and judgment.

On 23/11/2023, the Tribunal delivered its judgment. The Chairman said nothing about reading of the assessors' opinions nor made any reference to them in his judgment.

In its judgment, the Tribunal dismissed the appellant's claim and in doing so, it relied on the respondents' annexures that were not admitted in evidence.

From this decision, Khabibu Jumanne appearing throughout the proceedings before the Tribunal appealed to this Court as Khatibu Jumanne pointing three errors in the decision of the Tribunal but abandoned the third ground of appeal. First, the Tribunal wrongly relied on respondents' annexures that were not tendered in evidence and made a finding in their favour. Secondly, the Tribunal misapprehended the appellant's evidence.

After hearing the arguments, I reserved the appeal for judgment but in the course of preparing judgment, two issues became increasingly clear to me. I invited the parties to address me on the following issues:

1. Whether examination -in-chief was complete when the proceedings were called for revision by the High Court on 18/11/2021?

2. Whether the Tribunal was duly constituted before and subsequent to revisional proceedings by the High Court?

The learned counsel, Mr Lundu, argued that the change of assessors was contrary to law. If the tenure of the assessors had expired, it was wrong to vacate the former order. It was wrong to proceed with the hearing.

However, the failure of the second respondent to produce documents after the examination in-chief was not fatal.

The respondents stated individually that they leave it to the Court to make the decision as these were legal points.

Under section 23 of the Land Disputes Courts Act [Cap 216 RE 2019], the composition of the District Land and Housing Tribunal is a Chairman and at least two assessors.

Under section 24 (2), the Chairman may continue with the hearing of the land dispute in the absence of an assessor or assessors provided that they were present at the commencement of the proceedings. In the present appeal, it is clear that the trial commenced with assessors whose tenure had expired. The Chairperson who commenced trial, noted in the course of proceedings that the trial was being conducted with assessors whose tenure had expired and chose to vacate the proceedings, and ordered the trial to start afresh. However, the

successor chairperson, ordered the trial to proceed from where it had ended because, a Chairperson of a District Land and Housing Tribunal may proceed with trial in the absence of assessors.

For this reason alone, I invoke the revisional powers of this Court, and quash the proceedings and judgment of the trial tribunal. I order retrial before a different chairperson and set of assessors according to law. It is further directed that retrial should take place within forty-five days from the date of the dispatch of the records of this appeal to the Tribunal. It is so ordered. Each party to bear its own costs.

DATED at BABATI this 17<sup>th</sup> day of May, 2024



**F.M. MIRINDO**

**JUDGE**