

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB-REGISTRY)  
AT MOROGORO

**LAND APPEAL NO. 99 OF 2022**

*(Originating from Land Application No. 107 of 2020; in the Land and Housing Tribunal for Morogoro, at Morogoro).*

**ARBANUS NGAMBA..... APPELLANT**

**VERSUS**

**JUMA HASAN KAYOMBO (As an Administrator**

**Of the Estate of the Late Hassan Said Kayombo)..... RESPONDENT**

**JUDGEMENT**

16<sup>th</sup> Jan, 2024

M.J. Chaba, J.

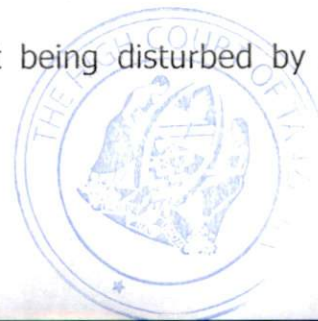
On 12<sup>th</sup> August, 2022, the Appellant, Arbanus Ngamba lodged his memorandum of appeal in this Court aiming to challenge the decision of the District Land and Housing Tribunal for Morogoro (the DLHT) delivered by Hon. E. Mogasa, Chairperson on 15<sup>th</sup> July, 2022.

As background, on the 3<sup>rd</sup> day of September, 2020 the respondent herein being an administrator of the estates of the Late Hassan Said Kayombo initiated a land dispute at the DLHT claiming that, the appellant trespassed into the suit land which was allocated to the deceased by the Village Council. At the height of the trial, the respondent was declared as a legal owner of the suit land, a resultant of which the DLHT ordered the appellant be evicted from suit land in disputes.



Aggrieved, the appellant preferred the present appeal determined to challenge the decision of the trial DLHT based on the following grounds of appeal:

1. That, the trial Tribunal erred in law and fact by determining the suit while it was *res judicata* with Land Case No. 107 of 2022 concluded by the Ward Tribunal of Kisasi within Morogoro District in Morogoro Region, henceforth leading to two contradictory Judgments on the same subject leading to unenforceability of the decree.
2. That, the trial Tribunal erred in law and fact having failed to consider the opinions of the Tribunal assessors henceforth leading to a judgment and proceedings vitiated with illegalities.
3. That, the trial Tribunal erred in law and fact for failure to evaluate the evidence in record which demonstrates the Appellant to be lawful owner of the land in dispute being allocated to the land by the local authority free from any encumbrances.
4. That, the trial Tribunal erred in law by considering the respondent as an administrator of the estate of the Late Hassan Saidi Kayombo while the Judgment do not reveal on any admission of any tendered document justifying such administration appointment, hence leading to proceedings vitiated with irregularities.
5. That, the trial Tribunal erred in law and fact having failed to consider undisputed facts that since the Appellant has stayed over the land in dispute for more than twelve years without being disturbed by any

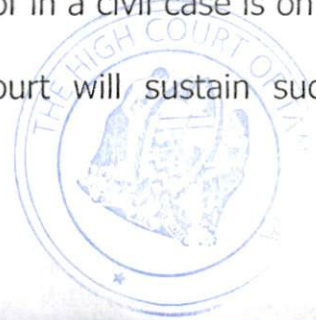


person including the respondent qualified to be a lawful owner by way of adverse possession.

6. That, the trial Tribunal erred in law and in fact having failed to evaluate the evidence on record contrary to the requirements of the law.

At the hearing of the appeal which was conducted by way of written submissions, the appellant appeared in person, and unrepresented. His written submission was drawn and filed by Mr. Mlyambelele Abednego Levi Ng'weli, Learned Advocate. On another hand, the respondent had the legal services of Mr. Ignas Punge, also Learned Advocate who drew and filed the respondent's reply to written submission in chief.

Before embarking on the merits of the the instant appeal and impassively examining the trial Tribunal's record, memorandum of appeal and rival submissions advanced by the Counsels for the parties for and against the present appeal, onset, I find it apt to highlight the guiding principles that this court will rely upon in the course of determining the instant appeal. One; being the first appellate court, my duty is to re-hear and re-evaluate the evidence on records so as to satisfy myself on the correctness of the finding and decision made by the trial DLHT. See the case of **Standard Chartered Bank Tanzania Limited vs. National Oil Tanzania Limited & Another (Civil Appeal 98 of 2008) [2013] TZCA 228 (5 February 2013)** (Extracted from [www.tanzlii.org](http://www.tanzlii.org)), Two; standard of proof in a civil case is on a preponderance of probabilities, meaning that the court will sustain such



evidence that is more credible than the other on a particular fact to be proved. In the course of perusing the court records, I noticed that the present appeal suffers from non-compliance with the mandatory legal procedures which renders the whole matter crumble. The first anomaly I noticed is, improper descriptions of the disputed suit land. Looking at the Application No. 107 of 2020 filed before the trial DLHT for Morogoro on the 3<sup>rd</sup> day of September, 2020 by the respondent herein, under paragraph 3, the location and address of the suit land was stated to be at Nyarutanga area of Kisaki Village within Morogoro District. However, no specific boundaries or neighbours were stated therein save for the size of the suit land which was stated to be of  $\frac{3}{4}$  acres. In my considered opinion, the description was too general and vague because all covering features surrounding it for easy and proper identification of the disputed suit land to enable the tribunal make an executable decree were not stated which is contrary to the guiding principle under the provision of Order VII, Rule 3 of the Civil Procedure Code [CAP. 33 R.E. 2019]. The section stipulates that:

*"Where the subject matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it and in case such property can be identified by a title number under the Land Registration Act, the plaintiff shall specify such title number."*



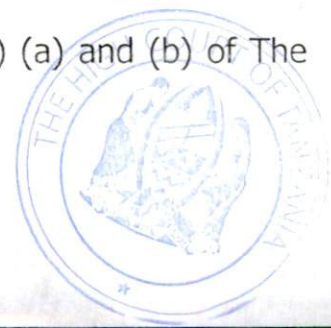
The above provision was amplified in a number of decisions enunciated by the Apex Court of our Land and this Court. See: **Mondorosi Village Council & Others vs. Tanzania Breweries Ltd & Others (Civil Appeal 66 of 2017) [2018] TZCA 303 (13 December 2018); Daniel Dagala Kanuda (As an Administrator of the Estate of the Late Mbalo Lusha Mbulida) vs. Masaka Ibeho and 4 Others, Land Appeal No. 26 of 2015, HCT at Tabora (unreported) and Mbwana M. Chuma & 2 Others vs. Dar Es Salaam Park Land Holding Limited (Land Appeal 34 of 2022) [2022] TZHCLandD 255 (13 April 2022)**, just to mention a few. With the above cited cases, I am mostly persuaded by the case of **Daniel Dagala Kanuda's case** (supra), where it was held:

*"The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it."*



Reverting to the present matter, it is clear that, the description of the suit land in the Application lodged at the DLHT was not sufficient for purposes of resolving the controversy between the parties. Much as there are cases claimed to have been determined over the suit land, specific description of the land in dispute was crucial for the trial Tribunal to ascertain as to whether the disputed parcel of land that was referred in Land Case at Kisaki Ward Tribunal was the same as the one which was filed before the DLHT and registered as Land Application No. 107 of 2020 so as to avoid multiplicity of suits barred by the doctrine of *res judicata*, denoting that a matter that has been adjudicated by a competent court or tribunal cannot be pursued further by the same parties. It therefore goes without saying that, the application lodged at the District Land and Housing Tribunal for Morogoro in Land Application No. 107 of 2020 was defective upon contravening the mandatory provisions of the law. I say so because, I think the import of Order VII, Rule 3 of the Civil Procedure Code, [CAP. 33, R.E. 2019] and Regulation 3 (2) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation of 2002, GN. No. 174 of 2002 (the Regulations) were intended to ensure that, the trial Court or Tribunal should have good and clear portrayal of the disputed suit land and do away with any uncertainties during identification of the same and easier the execution of the decree.

Another irregularity I noticed on the records, is associated with the requirement of the provision under Regulation 12 (1), (3) (a) and (b) of The



Land Disputes Courts (The District Land and Housing Tribunal) Regulation 2002, GN. No. 174 of 2003. For ease of reference, the Regulations read, I quote: -

*"12 (1) The chairman shall at the commencement of the hearing read and explain the contents of the application to the respondent.*

*(a) The tribunal shall where the respondent has admitted the claim, record his words and proceed to make orders as it thinks fit.*

*(b) Where the respondent does not admit the claim or part of the claim, lead the parties with their advocate, if any, to frame issues".*

During examination of the records of the trial tribunal, I noticed that, the Hon. Chairperson proceeded with the hearing of the application and received the parties' testimonies without being firstly read over and explained the contents of the application to the respondent. Failure to comply with the above regulations, it vitiates the proceedings and the resultants thereof.

Further, looking at the proceedings taken and recorded by the trial DLHT, it reveals that when the matter was scheduled for hearing on the 1<sup>st</sup> day of November, 2021, the presiding Chairperson (Hon. E. Mogasa) proceeded to frame issues for determination by himself without complying



with the Regulation 12. For ease of reference. I find it pertinent to demonstrates what actually transpired in the proceedings at trial, I quote: -

"...01/11/2021

*Akidi: Mwenyekiti.*

*Wajumbe: 1.*

2.

3.

*Mdai: Yupu*

*Mdaiwa: Yupu*

*Karani: CHANA*

*Adv. Giray: Namwakilisha mdai yupu.*

*Adv. Theophilus: Namwakilisha mdaiwa yupu.*

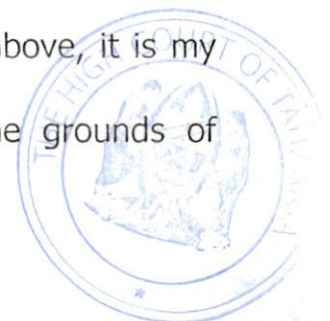
*VIINI VYA SHAURI*

1. *Nani mmiliki halali wa ardhi ya mgogoro.*

2. *Nafuu za wadaawa .....".*

From the foregoing, it is apparent on records that, the Hon. trial Chairperson did not indicate in the main proceedings as to whether, he fully complied with the requirements of Regulations 12 (3) of the Regulations (supra). In my unfeigned opinion, failure to comply with the mandatory provision of the law as shown above, it is obvious that the entire proceedings, judgment and decree of the trial DLHT are nullity, hence no competent appeal which may or can stem from a nullity proceeding.



In view of what I have endeavoured to deliberate hereinabove, it is my considered opinion that, without even considering in full the grounds of





appeal fronted by the appellant, the serious irregularities highlighted hereinabove, suffices to dispose the entire appeal. the circumstances, I allow the appeal and proceed to quash the proceedings of the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Application No. 107 of 2020, and set aside the judgment, decree and any other orders sprang therefrom. Either of the party, is at liberty to file a fresh Application before the competent Tribunal, if so, deems fit to fight and protect his interests. Given the nature of the matter itself, each party shall bear its own costs. Order accordingly.

**DATED at MOROGORO** this 16<sup>th</sup> day of January, 2024.

M. J. CHABA

**JUDGE**

**16/01/2024**

**Court:**

Judgment delivered under my Hand and the Seal of the Court in Chamber's this 16<sup>th</sup> day of January, 2024 in the presence of Appellant who appeared in person, and unrepresented and in the presence of Respondent who also appeared in person, and unrepresented.

  
**SUSAN P. KIHAWA**  
**DEPUTY REGISTRAR**  
**16/01/2024**



**Court:**

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.

  
**SUSAN P. KIHAWA**  
**DEPUTY REGISTRAR**  
**16/01/2024**

