

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

**IRINGA SUB - REGISTRY**

**AT IRINGA**

**APPLICATION NO. 38 OF 2023**

*(Arising from the Judgment of the District Land and Housing Tribunal for  
Iringa in Land Application No. 104 of 2018)*

**MSAFIRI ABDALAH MWALONGO** (Administrator of estate of the  
Late RAMADHANI MWALONGO) .....**APPLICANT**

***VERSUS***

**ANASTASIOUS MBOGORO** .....**1<sup>ST</sup> RESPONDENT**

**FATUMA ABDALAH MWALONGO** (Administrator of Estate of the  
Late ABDALAH MWALONGO) .....**2<sup>ND</sup> RESPONDENT**

**MWAJUMA ZUBERI MWALONGO** (Administrator of Estate of the  
Late ZUBERI MWALONGO) .....**3<sup>RD</sup> RESPONDENT**

**RULING**

*Date of Last Order: 09/05/2024*

*Date of Ruling: 30/05/2024*

**LALTAIKA, J.**

The Applicant herein **MSAFIRI ABDALAH MWALONGO** filed this application for revision under section 79(1)(a), (b) and (c) of the Civil Procedure Code (Cap 33 R.E. 2019). The revision is being sought against Application No.104 of 2018, adjudged in favour of **ANASTASIOUS MBOGORO** by the District Land and Housing Tribunal for Iringa (the DLHT)

in an ex-par-te decision between the 1<sup>st</sup> Respondent herein and the late Abdallah Mwalongo and Zuberi Mwalongo. It is noteworthy that neither the Applicant nor the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents (the "Junior Mwalongos") were parties to the impugned decision. The three are suing as administrators of estates of their departed fathers; **RAMADHANI MWALONGO, ABDALAH MWALONGO** and **ZUBERI MWALONGO** respectively (the "Senior Mwalongos").

As will be clear shortly, this "intergenerational litigation" meticulously interwoven with an attempt by the Junior Mwalongos to sue one another (that is to say, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents "sued" by their fellow Junior Mwalongo, the Applicant herein) to "prime the pump" makes this application an interesting read. As a matter of fact, these are not "Respondents" in the real sense of the word. The nature of the application made me think whether the learned Counsel for the Applicant (who occasionally, but cautiously, spoke on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that they "had accepted all facts") knew that he was about to cross the line of what is expected of an ethical Advocate who doubles as an officer of the court. For now, let's get the factual and contextual backdrop necessary to connect the dots.

The crux of this intergenerational litigation is Plot No. 50, Block "M" zone III, located in Miyomboni Area within Iringa Municipality. The plot that belonged to Ramadhani Mwalongo, who passed away in 1967 was sold to the 1<sup>st</sup> Respondent by one Abdallah Salehe, then administrator of the estate of the late Ramadhani Mwalongo in 2002. It appears that the other two "senior Mwalongos" (fathers to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) were resisting the transfer of the property through parallel litigation. The 1<sup>st</sup> Respondent sued them and successfully obtained eviction orders. Several attempts were made to challenge the decision of the DLHT but in vain hence this application. The main complaint is that the administrator of estate of the late Ramadhani Mwalongo (MSAFIRI ABDALAH MWALONGO, the applicant herein) was not joined in the application.

When the Application was called on for hearing on 04/04/2024, the Applicant appeared through **Mr. Shaba Mtungé**, learned Advocate. Whereas the first Respondent enjoyed the legal services of Ms. **Joyce Francis**, learned Advocate, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents appeared in person without legal representation. Parties opted to dispose of the Application by way of written submissions. With a note of approval by this court, the following schedule was ordered: Filing of Applicant's written submission:

18/4/2024, Filing of Respondents' Reply to the Submission: 02/05/2024, Filing of Applicant's Rejoinder (if any): 9/5/2024, Mention for necessary orders to schedule the date of Ruling: 9/5/2024.

I hereby register my commendations to the learned Advocates for the Applicant and the 1<sup>st</sup> Respondent as well as the unnamed legal aid provider who drafted documents for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents for spotlessly complying with the above ordered schedule. The next part of this ruling is a summary of the submissions by both parties.

Mr. Mtungé, Counsel for the Applicant, submitted in support of the application beginning with the first point. He argued that the proceedings, judgment, and order were null due to the administrator of the estate of the late Ramadhan Mwalongo not being given the right to be heard regarding the ownership of Land in plot No. 50 Block "M" Iringa Township, originally owned by the deceased. He referred to the trial tribunal's proceedings, highlighting the issues to be determined, which included the ownership of the suit premise and the reliefs to which the parties were entitled.

Mr. Mtungé pointed out that on page 7 of the trial tribunal's proceedings, the witness (PW1) stated he bought the house on 13/03/2002

but had not been handed the house because of ongoing cases, which ended in 2015. The person who sold the house was the administrator, who had not handed over the house to the 1<sup>st</sup> respondent by the time the application was filed in the Trial Tribunal. He emphasized that the administrator was a necessary party to the application, and without him, nothing could be done regarding the estate of the deceased.

He asserted that the administrator, as the legal representative, had the power to sue or be sued on the property of the deceased. Therefore, Mr. Mtungé reasoned, suing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents was illegal and the proceedings and judgment of the trial tribunal should be nullified for suing the wrong parties. He cited the case of **Abbas Ally Athuman Bantulaki and Another vs. Kelvin Victor Mahity (Administrator of the Estate of the late Peter Walcher)** Civil Appeal No. 385 of 2019 in the Court of Appeal of Tanzania (CAT) at Dar es Salaam (unreported), emphasizing the requirement to appoint an administrator of the estate or executor of the will.

Mr. Mtungé argued further that the proceedings, judgment, and order were null due to the tribunal's lack of jurisdiction over the land in dispute and because the application was filed out of time. He noted that the 1<sup>st</sup>

respondent, in the trial tribunal, stated he bought the house on 13/03/2002, and the house had not been handed to him, indicating a problem with the plot. The responsible person, the administrator, Mr. Mtungé averred, was not part of any case and had not handed the property to the 1<sup>st</sup> respondent from 2002 to 2018. The learned Advocate emphasized that the cause of action exceeding 12 years without an extension of time violated the Law of Limitation Act, rendering the trial tribunal without jurisdiction.

He referred to the case of **Muse Zongori Kisere vs. Richard Kisika Mugendi and Two Others**, Civil Application No. 244/01 of 2019, CAT at Dar es Salaam, which emphasized that issues of being time-barred relate to the court's jurisdiction and cannot be overlooked. He highlighted **Section 3(1) of the Law of Limitation Act** as amended, which mandates dismissal of proceedings instituted after the prescribed period of limitation. He also cited Item 22 of the Schedule of the Law of Limitation Act, which states that suits to recover land must be filed within twelve years.

Mr. Mtungé also argued that no valid sale of the disputed land occurred because no one had the power to sell the disputed land to date. He cited Section 68(1) of the Land Registration Act, which requires the administrator

to be registered as a legal personal representative before any sale or disposition of the property. He referenced the same case of **Abbas Ally Athuman Bantulaki and Another vs. Kelvin Victor Mahity (Administrator of the Estate of the late Peter Walcher)** (supra), which clarified that without such registration, the administrator lacked the mandate to sell the property. He asserted that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had no locus standi on the property, and the land with plot No. 50 Block "M" Zone III Iringa Township was different from plot No. 50 Block "M" Iringa Township.

Additionally, Mr. Mtungé argued that the judgment and its execution were procured illegally for not serving summons to the respondents and proceeding ex-parte without the tribunal's order. He emphasized that the summons were not properly served, and the right to be heard was denied.

**Ms. Kitta, Counsel for the 1<sup>st</sup> Respondent,** responded to the submission by Mr. Mtungé, asserting that the Applicant's request for a revision of the judgment and proceedings of the DLHT lacked merit. She systematically addressed the Applicant's contentions, starting with the claim that the administrator of the estate of the late Ramadhan Mwalongo was

denied the right to be heard regarding the ownership of the land in Plot No. 50, Block "M," Iringa Town.

Ms. Kitta explained that **Abdallah Salehe** was appointed as the administrator of the estate of the late Ramadhan Mwalongo via **Probate No. 47 of 2000**. **By the time the matter was before the tribunal in 2018**, Abdallah Salehe had already administered the estate and filed an inventory, thereby concluding his duties. Consequently, Ms. Kitta reasoned, there was no need for the Applicant to include him as an administrator in the tribunal proceedings.

Ms. Kitta emphasized that appointing an administrator of a deceased's estate is a legal necessity, not a mere formality. In this case, Ms. Kitta reasoned, the administrator had been duly appointed, had administered the estate, and had sold the property to the 1<sup>st</sup> Respondent. Despite the 1<sup>st</sup> Respondent facing multiple legal challenges from the Mwalongo family, Ms. Kitta averred, the sale by Abdallah Salehe was lawful and final. She supported her contention by referencing the case of **Abbas Ally Athuman Bantulaki & Another v. Athuman Khamis & Another** (1973) HCD 256.

The learned Advocate emphasized that given that Abdallah Salehe had completed his duties and filed an inventory, he was no longer an administrator, and his involvement was unnecessary. Ms. Kitta highlighted that the 1<sup>st</sup> Respondent could not include the administrator in the proceedings since he had been discharged from his duties and had passed away. The law allows an administrator to dispose of any property of the deceased's estate, Ms. Kitta reasoned, a power exercised by Abdallah Salehe when he sold the property to the 1<sup>st</sup> Respondent.

Ms. Kitta addressed the reason why the 1<sup>st</sup> Respondent sued the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, explaining that they were trespassing on the 1<sup>st</sup> Respondent's property, which he had legally purchased from the administrator. She emphasized that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had refused to accept summons and failed to appear before the tribunal to defend their case, thus justifying the 1<sup>st</sup> Respondent's actions.

She noted the inconsistency in the Applicant's role, having acted as an administrator of different estates in various cases, causing confusion. Specifically, Ms. Kitta recounted, the Applicant had previously sued the 1<sup>st</sup> Respondent as the administrator of the estate of the late Abdallah Mwalongo

in Application No. 130/2021 and was now claiming to represent the estate of the late Ramadhan Mwalongo. Ms. Kitta averred that this inconsistency raised questions about the Applicant's legitimacy.

Regarding the Applicant's contention that the tribunal's proceedings, judgment, and order were nullities due to lack of jurisdiction and untimeliness, Ms. Kitta countered that the 1st Respondent had actively pursued his legal rights since purchasing the property in 2002. She averred that multiple cases among the Mwalongo family had delayed the process, but in 2015, **through Misc. Civil Application No. 22 of 2014**, the Court ordered the property to be sold. Therefore, Ms. Kitta argued, the 1<sup>st</sup> Respondent's application before the tribunal in 2018 was within the 12-year legal limit.

Ms. Kitta argued further that the tribunal had jurisdiction over the matter and that the proceedings, judgment, and order were legally sound. She distinguished the case cited by the Applicant, **Musezongori Kisere v. Aloyce S. Maro & Another** (supra) noting that it involved an appeal that was time-barred, unlike the timely filed Application No. 104/2018.

On the issue of the alleged illegality of the sale of the disputed land, Ms. Kitta reiterated that the sale was legitimate and conducted by the authorized administrator, Abdallah Salehe. She questioned why the Applicant waited 22 years to raise this issue, arguing that such a delay undermined the Applicant's claims. Regarding the description of the property, Ms. Kitta clarified that the minor differences in the plot description did not affect the execution or identification of the property, which was well known to all parties. She maintained that the 1<sup>st</sup> Respondent purchased Plot No. 50, Block "M," Zone III, Iringa Township, and the execution involved the same property, as evidenced by the tribunal's records.

On the Applicant's claim that the ex parte judgment was illegal due to the lack of a tribunal order to proceed ex parte, Ms. Kitta pointed out that the ex parte order was issued on 14/11/2018 after confirming that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had been duly served with summons but refused to appear. She emphasized that witnesses Veronica Wilson and Emmanuel James corroborated this, confirming the Respondents' refusal to accept the summons. Therefore, Ms. Kitta averred, the trial tribunal acted appropriately in proceeding ex parte.

Ms. Kitta argued that the Applicant was not the legitimate administrator of the estate of the late Ramadhan Mwalongo, as this role had been fulfilled by Abdallah Salehe, who had administered the estate and filed an inventory. She cited the case of **Juma B. Kadala v. Laurent Mnkande** [1983] TLR 103, which underscores the importance of finality in probate matters, to support her contention that reopening the administration of the estate violated legal principles and natural justice.

In her conclusion, Ms. Kitta urged the Court to dismiss the revision application, uphold the decision of the DLHT, and leave it undisturbed. She argued that the Applicant lacked a legitimate locus standi and that his claims were inconsistent and legally questionable. She emphasized the need for finality in legal proceedings, particularly in probate matters, and argued that reopening the estate of the late Ramadhan Mwalongo after 57 years was unjustifiable.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents' joint submission was in Kiswahili and, as alluded to earlier, was coached to "prime the pump" making their whole case largely questionable. They asked this court to "accept" the applicant's arguments. I choose to proceed with the Applicant's rejoinder submission.

In his **rejoinder submission**, Mr. Mtungé addressed the new issues raised by the 1st respondent, systematically responding to each point of the applicant's prayers. He argued that the proceedings, judgment, and order were null for several reasons.

Firstly, he emphasized that the administrator of the late Ramadhan Mwalongo's estate was not given a chance to be heard regarding the ownership of the land in question. He pointed out that the trial tribunal's proceedings lacked crucial documents, such as Form V for inventory, Form VI for account, and a ruling or order closing Probate Cause No. 47 of 2000. Contrary to the 1<sup>st</sup> respondent's claim that this probate cause was closed, Mr. Mtungé asserted, the administrator was removed without distributing the property to beneficiaries. He further explained that currently, Msafiri Abdallah Mwalongo is the registered legal personal representative of the disputed land.

Furthermore, Mr. Mtungé contended that the 1<sup>st</sup> respondent should have sued the vendor, not the 2<sup>nd</sup> and 3<sup>rd</sup> respondents, as the house was not handed over to him. Additionally, he argued that the proceedings were null because the tribunal lacked jurisdiction and the application was filed out

of time. Elaborating, Mr. Mtungé averred that the cause of action began in 2002, but the application was only filed in 2018, making it time-barred under the Law of Limitation Act.

Mr. Mtungé also emphasized that any attempt to sell the disputed land was illegal, as the alleged vendor was not registered as the legal personal representative with the power to sell. He criticized the trial tribunal for overlooking this illegality, asserting that there was no valid disposition of the property.

Moreover, he highlighted that the ex-parte judgment was procured illegally because the summons were not properly served, and the hearing proceeded without an order to conduct it ex-parte. Lastly, Mr. Mtungé pointed out the weak and contradictory nature of the 1<sup>st</sup> respondent's evidence. He noted inconsistencies, such as the claim that the 1st respondent was informed by deceased persons, which further undermined the credibility of the evidence presented.

**I have dispassionately considered the submissions** in the light of the grounds for revision. I have also carefully examined the records. The applicant's arguments are based on alleged procedural improprieties and

substantive legal issues. They range from locus standi, the application allegedly being time-barred, and the trial tribunal's lack of jurisdiction.

Specifically, the applicant contends that the trial tribunal's proceedings, judgment, and order are a nullity due to the administrator of the estate not being heard regarding the land's ownership. However, the 1<sup>st</sup> respondent asserts that the probate cause No. 47 of 2000 was properly closed, and the administrator was duly removed, allowing for a new appointment. I have carefully examined the court records including decisions of the Iringa Urban Primary Court dated 6/12/2001 where the court clearly stated on page 2

"Kwa vile msimamizi wa mirathi ameleta taarifa juu ya kugawa mali za marehemu, kazi ya msimamizi wa mirathi imemalizika leo asijihusishe tena kusimamia nyumba hizo..."

Direct translation: since the administrator of estate has filed the report on distribution of the estate today, he is discharged forthwith and should no longer be involved in management of the said houses. The absence of specific forms (Form V for inventory, Form VI for account) and a formal order

closing the probate cause as claimed by counsel for the Applicant is a mere technicality. The order of the court quoted leaves no room for such misplaced claims. See **Juma B. Kadala v. Laurent Mnkande (supra)** where it was held that procedural irregularities must substantially affect the outcome to warrant nullification. The evidence does not demonstrate such a substantial impact in this case.

I should probably add that it takes only a few hours of concentration to go through the court records with documents dating back to the year 2000 to realize that many if not all grounds of revision raised by the applicant are either misleading or raised by someone who has not taken time to read the records.

On jurisdiction and timelines, the applicant argues that the tribunal lacked jurisdiction because the application was filed out of time. The cause of action purportedly began in 2002, but the application was not filed until 2018. This court acknowledges the legal principle outlined in **Muse Zongori Kisere v. Richard Kisika Mugendi**, Civil Application No. 244/01 of 2019, which emphasizes the importance of adherence to statutory limitation periods. However, the 1<sup>st</sup> respondent provided evidence indicating

continuous disputes and litigation among the parties, which concluded only in 2015. The doctrine of continuous accrual suggests that the statute of limitations might not bar the 2018 application, as the cause of action can be considered ongoing until the final resolution of disputes.

This brings me to the validity of sale and power of administrator. The applicant claims that any sale of the disputed land was illegal since the vendor was not the registered legal personal representative. Indeed, according to the Land Registration Act, Section 68(1), and the decision in **Abbas Ally Athuman Bantulaki v. Kelvin Victor Mahity**, Civil Appeal No. 385 of 2019, only a registered legal representative has the authority to sell property. However, the 1<sup>st</sup> respondent provided evidence of his purchase and subsequent disputes, suggesting that the tribunal considered these factors. It is my finding that the absence of registration does not automatically nullify the sale if the tribunal found the transaction substantively valid based on the presented evidence.

With regards to the ex-parte Judgment and service of summons, the applicant challenges the ex-parte judgment, arguing improper service of summons and lack of an order for ex-parte proceedings. Nevertheless, the

1<sup>st</sup> respondent countered that the summons were served appropriately and that the tribunal had grounds to proceed ex-parte based on the circumstances presented. I have taken the trouble to examine the records and I entertain no doubt that the summons were served properly as testified by the then Acting Ward Executive Officer. The learned Chairman of the Tribunal considered possibilities for improper service and took the necessary actions to prove to the contrary. It is not upon this court to invalidate judgements of lower courts and tribunals simply because they were ex-parte without concrete evidence of procedural misconduct or prejudice resulting from the ex-parte order. This is especially the case in the matter at hand where evidence of refusal of summons by the then respondents (the Senior Mwalongo's) is overwhelming.

On evidence credibility and inconsistencies, the applicant pointed out inconsistencies in the 1<sup>st</sup> respondent's evidence, such as receiving information from deceased persons. While such discrepancies may affect credibility, they do not, on their own, invalidate the tribunal's judgment. The tribunal, as the primary factfinder, is better positioned to assess witness credibility and evidence weight. This court finds no compelling reason to override the tribunal's findings based on these alleged inconsistencies.

In the upshot, the application is hereby dismissed for lack of merit, and the trial tribunal's decision stands.

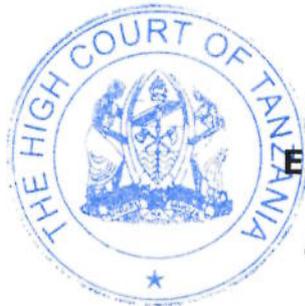
It is so ordered.



**E.I. LALTAIKA**  
**JUDGE**  
**30.05.2024**

**Court**

This judgement is delivered under my hand and the seal of this court this 30<sup>th</sup> day of May 2024 in the presence of **Mr. Shaba Mtungé** Counsel for the Applicant (who also held brief for **Ms. Joyce Francis** Counsel for the 1<sup>st</sup> Respondent) and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who have appeared in person.



**E.I. LALTAIKA**  
**JUDGE**  
**30.05.2024**

**Court**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



**E.I. LALTAIKA**  
**JUDGE**  
**30.05.2024**