THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA SUB- REGISTRY

AT MBEYA

LAND APPEAL NO.57 OF 2023

(Originating from Land Application No. 68 of 2020 of District Land and Housing Tribunal for Mbeya at Mbeya)

SAID ALLY KIPEMBELE.....APPELLANT

VERSUS

SUBIRA MNGEREZA .....1ST RESPONDENT

JOSEPH CHANG'A (The administrator of the estate of the late Clement Chang'a) .....2ND RESPONDENT

JUDGEMENT

22nd and 31st May, 2024

Kawishe, J:.

The appellant, Said Ally Kipembele being aggrieved by the decision of the District Land and Housing Tribunal of Mbeya at Mbeya in Land Application No. 68 of 2020, appealed before this court on the following grounds reproduced hereunder:

1. *That the trial tribunal erred in law and fact to hold that the respondents are the rightful owner of the land as there was no compensation given to them without considering that the claim of compensation is time barred according to the Law of Limitation Act.*

2. *That, the trial tribunal erred in law and facts for delivering judgement for the respondents without considering that the evidence of the appellant was strong compared to the evidence adduced by the respondents and the same proved the case on balance of probabilities.*
3. *That the trial tribunal erred in law and facts to proceed with hearing without recording the members who attended on the 4th day of February, 2021 during hearing.*
4. *That the trial tribunal erred in law and fact to proceed with the matter on the 6th day of March, 2023 without the presence of the appellant counsel hence denying the appellant the right of being represented.*
5. *That the trial tribunal erred in law and fact to hold that the respondents are the lawful owner of the land due to the fact that there was no compensation without considering the appellant was transferred land and he had nothing to do with compensation.*
6. *That the trial tribunal erred in law and fact to entertain the matter without joining the Mbeya City Council who is the necessary party in the matter.*
7. *That the trial tribunal erred in law and fact to determine the matter in favour of the respondents without considering the respondents was entitle to be compensated by the Mbeya City Council or late Bakari Said Myege Mtika and the Administratrix of the Estate of the late Bakari Said (Zainab Idd Ramadhan).*
8. *That the trial tribunal erred in law and fact for failure to evaluate and analyse the evidence of the appellant property.*
9. *That the trial tribunal erred in law and fact to determine the matter without considering that the evidence of the defence side was contradictory and unreliable.*
10. *That the trial tribunal erred in law and fact to determine the matter for the benefits of the respondents without considering that the second respondent bought the land in 2008 when the same was under ownership of Bakari Said Myege Mtika and he owned the said land through title Deed after being allocated by Mbeya City Council.*

The facts of the case are drawn from the evidence adduced by the parties before the trial tribunal. That the appellant/applicant sued the respondents for trespass over his land. The disputed land is located at Uyole, Plot No. 101, Block J Uyole, the land was surveyed in 1995, and allocated to Bakari Said Myege Mtika. That those were the original/indigenous owners and were compensated, and before 1999 the new owner was the one who pay compensation to the original owner. The appellant purchased the same land from Zainab Idd Ramadhan (administratrix of the estate of his late husband Bakari Said Myege Mtika) who was the lawful owner with the certificate of title of the disputed land registered on 1/4/2002. The appellant transferred the title of the land from Zainab Idd Ramadhan in 2015. Zainab had already transferred the title from her husband's name to her name in 2014. The appellant stated that the transfer was blessed by the Mbeya City Council and he was recognized as the lawful owner of the land in dispute, and granted with the certificate of title on 12/8/2015. The certificate of title was admitted as 'exhibit P1'. The trespassers were prohibited to proceed with the construction of a residential house, stop order was issued to them. Stop order was tendered and admitted as 'exhibit P2'.

On the other side the respondents claimed to be the lawful owners of the land in dispute on the ground that they purchased the land in dispute from Chrispin Mwakwenda and Rodrick Mwakwenda, in 2008. The sale agreement was tendered and admitted as exhibit D1 and D2. Thereafter, the respondents were issued with the building permit, it was titled *'Kibali cha ujenzi wa nyumba ya kuishi mtaa wa Mponja kata ya Igawilo'.* It was tendered and admitted as exhibit 'D3'. Later on, the respondents were issued with a letter from DED (Mkurugenzi wa jiji), the letter informed the appellant that the land in dispute was owned by Mwakwenda after survey the land was allocated to Bakari Said Myega Mtika, then the administratrix of Bakari who is Zainab sold the said land to the appellant in 2015. The letter was tendered and admitted as exhibit 'D4'. The letter prohibited the appellant to use the land in dispute because the indigenous owner was not compensated.

Having heard the evidence of both parties; the trial tribunal decided the matter in favour of the respondents. Hence, the appellant filed an appeal in this court. The grounds of appeal were argued by a way of written submission upon request and consensus by the parties. The appellant was unrepresented, the 1st respondent was unrepresented too

while, the 2nd respondent enjoyed the services of Mr. Alfred Chapa, learned counsel.

In arguing the grounds of appeal, the appellant argued the first, fifth and the seventh grounds of appeal collectively. The appellant submitted on the issue of compensation. He argued that the respondents were declared to be the lawful owners, on the ground that there was no compensation paid to them. Firstly, he argued that the compensation claimed by the respondents is time barred as per section 3(1) of the Law of Limitation Act [Cap 89 R.E 2019]. He cited the case of **Registered Trustees of Moravian Church of Tanzania and Theofilo Kisanji University vs. Bernard Mwaikombo,** Land Appeal No.7 of 2017 which cited the case of **Atupele Ngumbwisye Ngiluke & 47 Others vs. Busokelo District Council**, Land Case No. 16 of 2017, where the application for compensation was dismissed based on time limitation. He referred also the case of **Yusuf Same and Another vs. Hadija Yusuf** (1996) TLR 347 to cement his position.

Secondly basing on the fifth and seventh grounds he argued that, the respondents were declared lawful owner of the land in dispute on the ground that, there was no compensation paid to them. That the one who was supposed to compensate the respondents, is the one who took

the land. In this case he threw the blame to Mbeya City Council as the one who surveyed the land in dispute, that was the one supposed to pay compensation, or Bakari Said Myege the one who has been allocated the land by Mbeya City Council, and not the appellant.

In the second ground of appeal the appellant submitted that the trial tribunal erred to decide in favour of the respondents without considering that the evidence of the appellant was strong and proved the case on balance of probabilities. That the trial tribunal acted contrary to the cited case by the appellant, that in the case of **Hanna Pondo Kasambala & Stella Kasambala Shoo vs. The Republic**, Criminal Appeal No.88 of 2017 which was cited in the case of **Letelimbe Tembela vs. The Registered Trustees of Chama Cha Mapinduzi**, Land Appeal No. 89 of 2021, that the evidence on record was not properly analysed.

Reverting to the third and the fourth ground of appeal the appellant argued them jointly. In the third ground the appellant argued that, on 4/2/2021 the tribunal proceedings show that the trial chairman did not sit with the assessors or assessor. Therefore, the trial tribunal chairman acted contrary to section 23(1), (2) and (3) of the Land Disputes Courts Act [Cap 216 R.E 2019]. Failure to do so the trial

tribunal proceedings amount to be illegal. Arguing the fourth ground he stated that on 6/3/2023 the trial tribunal proceed with the matter in the absence of the appellant's counsel. Therefore, the appellant was denied his right to be represented, it is contrary to Order III Rule 1 [Cap 33 R.E 2019]. He cited the case of **E.A. Posts and Telecommunications Corp. vs. M/S Terezo Ravious** [1973] TLR No. 58 where it was held that appearance by an advocate is recognised as appearance of a party himself. He cemented his position that right to legal representation is a human right and protected under the Constitution of the United Republic of Tanzania, by citing the case of **Richard Kasela vs. The Chairman of the Teachers Service, Commission (TSC) and 2 Others,** HC, Misc. Civil Application No. 15 of 2001 at Mbeya, the case was cited in the case of **Sibonike Anyingisye Mwasalemba vs. Theofilo Kisanji University,** Misc. Civil Application No.2 of 2020, HC. He also referred the case of **Thomas Mjengi vs. Republic** [1992] TLR 157. Therefore, the appellant was denied his right of legal representation.

On the sixth ground that the trial tribunal erred by not joining the necessary parties that is, Mbeya City Council and the Commissioner for Land, since the matter involved the registered land. He referred Order I Rule 3 of the CPC [Cap 33 R.E 2019]. He cited the case of **Ami**

Mpungwe vs. Abas Sykes, Court of Appeal DSM, Civil Application No. 67 of 2000 as it was cited in the case of **Heritage Motel vs. Copyright Society of Tanzania and Another,** Commercial Application No. 4 of 2009 at the HC of Tanzania at DSM. The appellant cited Order 10(2) of the Civil Procedure Code, and he referred the case of **Juma B. Kadala vs. Laurent Mnkande** [1983] TLR 103. Therefore, it is his position that the Commissioner for Land who authorised transfer of the land, and Mbeya City Council which was responsible for surveying and compensating the original owners of the land, are necessary party to be joined. He added that the issue of joining Commissioner for Land and Mbeya City Council was raised by the counsel of both parties, before the trial tribunal on 4/9/2022, but it ended in vain.

In the eight ground of appeal the trial tribunal did not evaluate and analyse the evidence of the appellant. The appellant argued that the evidence of the appellant was stronger to prove the ownership in favour of him. He cited the case of **Hemed Said vs. Mohamed Mbilu** [1984] TLR 113. That, if the evidence was properly evaluated and analysed the trial tribunal could conclude that the appellant is the lawful owner of the land. He referred to section 110(1) and (2) of the Evidence Act to cement his position.

On the nineth ground of appeal that the trial tribunal did not consider that the evidence of the respondents was contradictory and unreliable. That there are discrepancies which went to the root of the case, that they also did not tender any documentary evidence. That the first respondent stated that he was born on 1908, which is not true. He cited the case of **Lukas Kapinga & 2 others vs. R** [2006] TLR 374 and the case of **Mohamed Said Matula vs. R** (1995) TLR 3 to cement his position.

The appellant prayed the appeal to be allowed with costs and the appellant to be declared as the lawful owner.

In reply the first respondent unrepresented, in her written submission argued that regarding the 1, 5, and 7 grounds, the appellant was illegally allocated the land in dispute. The certificate of the right of occupancy was obtained by fraud. She went further to argue that the appellant failed to proof on his ownership on the related land in dispute as per section 110(1) of the Evidence Act. That the evidence by the respondent's witness (Rodrick Ruben Mwakwenda) in the exhibit D4 stated that the appellant was stopped to use the allocated land because the indigenous were not compensated. She cited the case of **A.G vs. Lohay Akonaay and others** (1995) TLR 80, to cement her position

and the case of **the Attorney General and Another vs. Mohamed Said,** Civil Appeal No.75 and 79 of 2021. She insisted that the first priority is to be on an indigenous owner, has to be allocated with the land failure to do so, has to be compensated. Regarding ground 2 of appeal the first respondent replied that the appellant did not prove his case on balance of probabilities.

On the third and fourth grounds of appeal, the first respondent argued that the appellant failed to elaborate how he has been affected by the absence of his counsel while, he was fully represented.

In the issue of joining necessary party, she argued that it is the duty of the party who initiated the proceeding and not the tribunal. Therefore, the ground is an afterthought.

In the issue of controversy in evidence, she argued that the evidence was well analysed and evaluated. The decision reached by the trial tribunal was fair and just. That this appeal has no merit, and has to be dismissed with costs.

In his reply, the second respondent who is the administrator of the deceased Clement Chang'a, under the service of the learned counsel Mr. Alfred Chapa, argued grounds 1, 5 and 7 of appeal that, the cited provision section 3(1) of the Law of Limitation Act is inapplicable in this

situation at hand. The respondent claims to be declared lawful owner and not to be compensated. The respondent claimed to have bought the land in dispute from the original owners, the family of Mwakwenda as per exhibit D4. The cited case by the appellant is distinguishable from this case at hand.

Regarding the fifth and the seventh grounds, the counsel argued that the compensation was not paid to the indigenous or original owners of the land, and the appellant was aware that the same should have been paid by Mbeya City Cuncil or Zainab Idd Ramadhan. That the appellant himself did not sue either of them before the trial tribunal, for the necessary order against them. The counsel cited the case of **Stanslaus Kalokola vs. Tanzania Building Agency and Another**, Civil Appeal No. 45 of 2018, CAT Mwanza.

On the second ground, the learned counsel submitted that the evidence of the appellant was contradictory on the issue of compensation. That the appellant denied the issue of compensation but his witnesses insisted on the issue of compensation, that before allocation to the indigenous owner who sold the land to the respondents were supposed to be compensated. But there was no compensation paid.

Responding to the third and fourth grounds of appeal, the issue that on 4/2/2021 there were no assessors. In the typed proceedings it is true, but in the original file the proceedings show that the assessors were present. He invited the court to crosscheck the original records. He insists his submission by citing section 45 of the Land Disputes Courts Act and the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph,** Civil Appeal No. 55 of 2017 CAT at Mwanza.

Regarding the fourth ground that the trial tribunal continue with the trial in absence of the appellant's counsel. The counsel argued that, the trial tribunal proceedings show that the appellant was asked if he was ready to proceed with the trial tribunal and he agreed. He did not inform the trial tribunal of his advocate. Thus, this is an afterthought, the appellant exercised his right to examine witnesses. The issue to be determined is whether these shortcomings had caused injustice to the appellant, he cited the case of **Daktari Jumanne vs. Republic,** Criminal Appeal No. 602 of 2021 CAT Dodoma.

Regarding the sixth ground of appeal the appellant complained that the tribunal failed to join Mbeya City Council, the counsel argued that this is a misconception as no court or tribunal should join a party to the case while the plaintiff did wish to sue the same. That the appellant

in this case stated that he would call Mbeya City Council as witnesses. The counsel for the appellant in the trial tribunal stated he was going to consult his client (appellant) on the issue of joining parties, but there was no any feedback to the trial tribunal.

In the eight and nineth grounds of appeal on the issue of evaluation and analysis of evidence, the counsel argued that the trial tribunal analysed and evaluated evidence of both sides as per page 3 and 4 of the typed judgement. That the appellant and his witnesses testified that the customary owners were not compensated. The appellant was supposed to prove that compensation was paid, and he was legally allocated the land. The counsel went further to argue that the seller was supposed to be joined in order to prove if compensation was paid to the customary owners. Therefore, the respondents' evidence was very clear that the land was given to the appellant without following the procedure and the principle of buyer be aware to apply and the principle of bonafide purchaser not to apply here. The counsel prayed to this court that the appeal to be dismissed with costs.

In rejoinder the appellant argued that the authority that has issued exhibit D4 as notice to the appellant to abstain from using the land in which the original owner was not compensated, is the same authority

which issued a certificate of title to the appellant. Therefore, basing on ground 6 of appeal that the trial tribunal erred to determine the matter without joining the necessary party that is Mbeya City and Commissioner for Lands, it is settled that, the trial tribunal was obliged to order the necessary parties to be joined. He cited the case of **Tang Gas Distributor Limited vs. Mohamed Salim Said and 2 Others,** Civil Application no.68 of 2011, it was referred in the case of **Mexons Investment Limited vs. CRDB Bank,** CAT, Civil Appeal No. 222 of 2018. The issue to join Mbeya City Council and the Commissioner for Lands was raised in the trial tribunal on 14/9/2022 that they are necessary parties and are supposed to be joined, failure to do so is procedural irregularity.

He went further to submit on grounds 3 and 4 of appeal, he reiterated almost the same as what he submitted in submission in chief.

The appellant went further to state that the authority which granted certificate of title over the land in dispute, is the proper party to answer the above issue. Therefore, the trial tribunal judgment has to be dismissed, appeal to be allowed and the appellant to be declared as lawful owner of the land.

Having summarised the submission made by both parties and having thorough perusal of the trial tribunal proceedings and the court records; this appeal will be determined based on the raised grounds of appeal.

Starting with the sixth ground of appeal that, the trial tribunal erred in law and fact to entertain the matter without joining the Mbeya City Council who is the necessary party in the matter. Basing on both parties' argument they argued on the issue of necessary parties. The issue to determine is who is the necessary party in the suit, and whether Mbeya City Council, Commissioner for Lands and the seller where necessary parties in this suit.

The necessary party in the suit, is such a person whose presence in the suit is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. Then who may be joined as necessary party and as defendants. Order I Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] provides that:

> *"All persons, may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if separate suits were brought against such persons, any common question of law or facts would arise".*

The issue of a necessary party was well underscored in the case of **Abdullatif Mohamed vs. Mehbob Yusuph Othman & Another**, Civil Revision No. 6 of 2017, it was held that:

> *"In order to find a person necessary party in a suit, there has to be right or relief against such party in respect of the matters involved in the suit and the court must not be in a position to pass effective decree in the absence of such a party".*

See also the case of **Abdi M. Kipolo vs. Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017, where it was stated that:

> *"A party becomes necessary to the suit if its determination cannot be made without affecting the interests of that necessary party. Black's Law Dictionary, eight Edition, by Bryan A. Garner, defines the term 'interested party' as, "a party who has recognizable stake (and therefore standing) in a matter. The same legal work defines the term 'necessary party' as, "a party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings".*

But there are circumstances to join necessary party, in the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said** (supra), it was held that:

> *".....an intervener, otherwise commonly referred to as a NECESSARY PARTY, would be added in a suit under this rule [Order 1 rule 10(2) of the CPC, Cap 33 R.E 2002] even though there is no distinct cause of action against him where;*
>
> *(a) ....*

(b) his proprietary rights are directly affected by the proceedings and to avoid a multiplicity of suits, his joinder is necessary so as to have him bound by the decision of the court in the suit or,

(c).....

(d) on the application of the defendant, it is shown that the defendant can not effectually set up a defence he desires to set up unless that person is called as a co-defendant".

The same was held in the case of **Claude Roman Shikonyi vs. Estomy A. Baraka**, Civil Revision No. 4 of 2012, where the decision of East African Court of Appeal was quoted in **Departed Asians Properties Custodian Board vs. Jaffer Brothers Ltd** [1999] EAJJ Supreme Court of Uganda, Per Mulenga, J:

"I have not laid my hands on any reported decision in East Africa directly on the point of criteria for determining that the presence of a person is necessary under Order I Rule 10(2) of CPC Rules.

However, taking leaf from authorities in other jurisdictions having similar and even identical rules of procedures, I would summarize the position as follows; For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions involved in the suit, one of the two things has to be shown.

Either it has to be shown that orders which the plaintiff seeks in the suit would legally affect the interests of that persons, and it is desirable, for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on application of defendant) to be joined as a co defendant, where it is shown that the defendant cannot effectually set up unless that person is joined in it, or unless the order to be made is to bind that person".

It is a trite law that it is the discretion of the court to add any party whom it finds necessary in determining the dispute, at any stage of the proceedings. Order I Rule 10(2) of Cap 33 provides:

> *"The court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as the plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".*

Having quoted the above case laws and provisions of the law, I concede with what started by the counsel for both parties. The counsels agreed on joining the necessary party in the suit, there is no dispute on it. The issue was on who was responsible to join the necessary party; the applicant or the respondents?

The appellant cited the case of **Heritage motel** (supra) to support his position on the necessity to join the necessary party, also he cited the case of **Juma B. Kadala vs. Laurent Mnkande** [1983] TLR 103, where it was held:

> *"in land suits therefore, a person who is alleged in pleadings to have conferred land title to the parties or any of them by one means another (such as by allocation or sale), and the person to whom the title was so conferred, are necessary parties to the suit".*

In my opinion basing on the above discussion, the parties as mentioned by the appellant that is the Commissioner for Lands and Mbeya City Council were necessary parties in the suit before the trial tribunal. The respondents were sued allegedly to have trespassed the appellant's land (land in dispute). The appellant claimed that he bought the land in dispute from Zainab, who is the administratrix of Bakari (deceased). Bakari was the one who was allocated the land by Mbeya City Council in 1995, and issued with the certificate of occupancy in 2012. The transfer of title (change of name of the deceased was done by Zainab (seller) the wife of the deceased. Later on, the title was transferred to the appellant (Said Ally Kipembele).

On the other side the respondents claimed to have bought the land in dispute from the family of Mwakwenda in the year 2008. The family of Mwakwenda claimed to be the lawful owner of the land in dispute by original (as indigenous owner). The reason being that, they were not compensated in the year 1995 when the land was allocated by Mbeya City Council.

Therefore, the issue is who was responsible to compensate the indigenous owner in the allocated land, is it Mbeya City Council or the new owner? In my view therefore, it was necessary to join Mbeya City

Council because it was involved in allocation, and the Commissioner for Lands, who issued a certificate of title, and the seller (Zainab). The aim of joining those parties was to avoid multiplicity of the suits. Also, the parties not joined but may be affected by the decision reached. Further, the presence of the above-mentioned parties is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Especially the issue of who was responsible to compensate the indigenous people in 1995.

Therefore, the trial tribunal or court has discretionary powers to join parties at any stage of the proceedings. Hence, the trial tribunal also was able to join the necessary parties in the suit after the allegation arose that both parties possessed interests on the land allocated by the city council and sold by the one who has been allocated.

The submission made by the respondent that the applicant/appellant was the one to join the necessary parties, is misconceived. The trial tribunal was responsible to order the necessary party to be joined in order to reach on fair and just decision. The issue was raised specifically at page 67 of the typed proceedings of the trial tribunal, I wish to quote:

*"**Wakili Chapa:** Mheshimiwa shauri limekuja kusikilizwa. Hata hivyo mara ya mwisho baraza lilituagizia kufanya utafiti kisheria kuona iwapo (sic) wadaawa wote muhimu wapo, yaani iwapo mamlaka ya ugawaji ardhi na kamishna wa ardhi ni wadaawa muhimu na iwapo baraza hili lina mamlaka. Hilo (sic) ni kwa sababu eneo la mgogoro limepimwa na mdai ana hati (sic). Nimefanya utafiti huo na kuona mamlaka hizo ni wahusika muhimu hivyo tunaomba muhusika muhimu aunganishwe.*

***Osiah:** Mheshimiwa naungana na wakili Chapa. Mahakama za juu zimetoa msimamo huo. Lakini sikumshirikisha mteja wangu suala hilo. Naomba ahirisho ili niwasiliane nae.*

Mdaiwa Na. 1: Nakubali"

This is very clear that the issue was tabled before Hon. Chairperson, all the parties agreed for adjournment so that the appellant's counsel could consult his client (applicant). According to the proceedings, the prayer was granted as was not objected by the respondents. It is unfortunate that, although Mr. Chapa, learned counsel for the 2nd respondent submitted to the trial tribunal that those parties were necessary and were required to be joined there was no action taken. More surprisingly, the applicant's counsel (appellant's counsel) never give feed back as Mr. Chapa submitted.

From what observed therefore, the issue on who was responsible to join the necessary party, is answered in Order I Rule 1(2) of the Civil Procedure Code and in the case of **Tang Gas Distributor Limited**

(supra) cited in the case of **Mexons Investment Limited** (supra) was quoted.

In Order I Rule 1(2) of the CPC it was stated that the court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, also the court or tribunal may order to add the name of any person who ought to have been joined, whether as the plaintiff or defendant. Also, whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

In the case of **Mexons Investiment Limited** (supra) where the case of **Tang Gas Distributor Limited** (supra) was cited, it was stated that:

> *"Settled law is to the effect that once it is discovered that a necessary party has not been joined in the suit and neither party is ready to apply to have him added as a party, the court has a separate and independent duty from the parties to have him added".*

The effect of not joining a necessary party to the case was stated in the same case where, the court stated that:

> *"...it is now an accepted principle of law (see MullaTreatise pg 810) that it is material irregularity for a court to decide a case in the absence of a necessary*

party. Failure to join a necessary party, therefore is fatal (MULLA at pg 1020)".

Therefore, the determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Thus, it is my humble view that, in this case at hand Mbeya City Council, the Commissioner for Lands and the seller were necessary parties in the suit. Failure of the trial tribunal to join the necessary parties was fatal and the only remedy is remitting the file to the trial tribunal.

Since, the 6th ground of this appeal has merit and with the effect of disposing of the appeal entirely, I see no need of labouring on the rest of the grounds of appeal.

Consequently, I quash and set aside the judgment of the District Land and Housing Tribunal of Mbeya at Mbeya dated 14th April, 2023 in Land Application No. 68 of 2020, and the proceedings of the trial tribunal from 15th September, 2022 up to 4th April, 2023. The file to be remitted to the same honourable chairperson in the trial tribunal. Hearing should proceed after joining the necessary party.

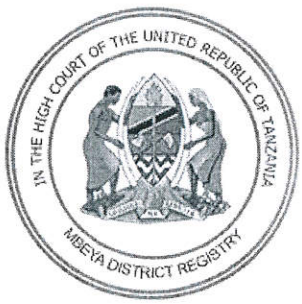
Given the fact that, the 2nd respondent's learned counsel adviced the trial tribunal to join the necessary parties, but the trial tribunal did

not exercise it powers, the fault is not on the respondents, in that regard, I shall not punish the respondents on the fault of the trial tribunal. For that reason, I make no orders as to costs. Each party to bear its costs.

It is so ordered.

Right to appeal by any aggrieved party is explained.

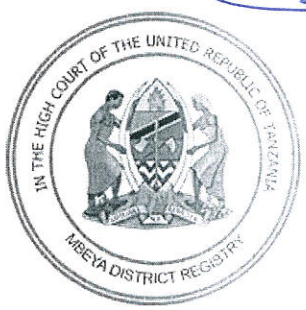
Dated at **MBEYA** this 31st day of May, 2024.



E.L. KAWISHE

JUDGE

Judgment delivered this 31st day of May, 2024 in the presence of Mr. Felix Kapinga, learned Counsel holding brief for Mr. Alfred Chapa, learned counsel for the 2nd respondent, and in the presence of the appellant, Mr. Said Kipembele and in the presence of the 1st respondent Subira Mngereza.



E.L. KAWISHE

JUDGE