

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

LAND APPEAL NO 28643 OF 2023

(Originating from Application No 59 of 2019 in the District Land and Housing Tribunal for Babati at Babati)

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|---------------------------------------|---|-------------------|
| 1. ZAIDINI ISSA..... | } | APPELLANTS |
| 2. ZAINABU SHABANI..... | | |
| 3. JUMA CHANDE..... | | |
| 4. CHIKU ABDALA..... | | |
| 5. RAJABU SHABANI..... | | |
| 6. MATLE MASAY..... | | |
| 7. FRANCIS PAULO MSHAHARA..... | | |
| 8. GENO MWASI..... | | |
| 9. ALI PATRIC KIBANDA..... | | |

VERSUS

STANSLAUS NJOVU.....RESPONDENT

JUDGMENT

8th May and 20th June, 2024

MIRINDO, J.:

Before Manyara District Land and Housing Tribunal, Stanslaus Njovu, the respondent, successfully sued the following nine appellants for among other things, to be declared the lawful owner of a suit land in Kisangaji Village, Babati District within Manayara Region: Zaidini Issa, Zainabu Shabani, Juma Chande, Chiku Abdala, Rajabu Shabani, Matle Masay, Francis Paulo Mshahara, Geno Mwasi, and Ali Patric Kibanda.

From that decision, the appellants have appealed to this Court on four grounds of appeal. Both parties appeared in person at the hearing of the appeal. The appellants' major complaint was that the suit was either not proved on the preponderance of probabilities or their evidence was not adequately considered by the trial tribunal. The respondent supported the decision of the trial tribunal and argued that the case was proved to the required standard.

Upon the first appellant complaint that not all the appellants were allowed to testify, I re-examined the handwritten record of the trial tribunal to verify the truthfulness of this allegation. The respondent's (applicant) case commenced on 21 September 2022 in the presence of eight appellants (defendants). The sixth appellant did not appear. The participation of the appellants in the trial proceedings is unclear. Only the third appellant, Juma Chande, and the eighth appellant, Geno Mwasi, were accorded opportunity to cross-examine the respondent. The second respondent's witness was cross-examined by the eighth appellant and the ninth appellant, Ali Patric Kibanda.

The only person who cross-examined the third respondent's witness was the eighth appellant. No reason is given why the other appellants were not accorded an opportunity to cross-examine.

The record is silent on why the remaining appellants never cross-examined respondent's witnesses. There is no indication of the appellants being afforded opportunity to cross-examine but declined to do so.

Also unclear is the status of the defence case. From the record it is only the first appellant who testified in addition to other three defence witnesses. The record is unclear whether the rest of the appellants forfeited their right to testify and call evidence on their behalf.

In this state of affairs, it is unclear that the appellants were accorded fair trial considering that they were unrepresented litigants. It was incumbent upon the presiding Chairman to guide them.

In both cases, there was denial of the right to be heard. The appellants were denied their right to cross-examine. They were also denied their right to testify. The latter violation was not only a breach of the right to be heard but also a misdirection on the law of evidence as was held in **National Agricultural Food Corporation v Mulbadaw Village Council and Others** [1985] TLR 88 at 91 that:

A person may act and represent another person, but we know of no law or legal enactment which can permit a person to testify in place of another.

Under these circumstances, I am satisfied that there was material irregularity affecting fair trial. I proceed to quash the proceedings and set aside the judgment of the trial tribunal. As was held by the Court of Appeal in **Abdalla v Abdalla**, Civil Appeal 13 of 2008, Court of Appeal of Tanzania at Dar es Salaam and **Mkurugenzi Ras Nungwi Hotel v Mwakisyala** Civil Appeal 100 of 2008, Court of Appeal of Tanzania at Zanzibar, a material irregularity may be a ground

for retrial and in the instant appeal, I am satisfied that it is the appropriate course of action.

Hence, I order trial *de novo* before a different chairperson and set of assessors in Babati District Land and Housing Tribunal being the successor to the Manyara District Land and Housing Tribunal. It is further directed that:

- (a) the trial tribunal conducts retrial within forty-five days from the date of the return of records of appeal from this Court;
- (b) each party be accorded equal opportunity to testify, produce evidence and object evidence being tendered. Joint cross-examination or response to the tendering of exhibit is inappropriate; and
- (c) each defendant be asked to exercise their right to produce evidence and object to any evidence being tendered.

It is so ordered.

DATED at BABATI this 11th day of June, 2024




F.M. MIRINDO

JUDGE