

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

**IN THE SUB-REGISTRY OF MTWARA**

**AT MTWARA**

**LAND APPEAL NO. 7233 OF 2024**

(Originating from Land Application No. 82/2022, the decision of the District Land and Housing Tribunal for Mtwara at Mtwara)

**HAMISI ABDALLAH SAMORA..... APPELLANT**

**VERSUS**

**MWINYILAWI YUSUPH MCHOMA..... RESPONDENT**

**RULING**

*12<sup>th</sup> & 19<sup>th</sup> June, 2024.*

**MPAZE, J.:**

On 12<sup>th</sup> June, 2024 when the matter came for hearing, the appellant raised a concern regarding the legality of Mr. Maalim Abeid Mikongo representing the respondent through a special power of attorney, despite the respondent being present. The appellant questioned why the respondent should not handle the matter himself.

In response to this issue, Mr. Maalim argued that he legally represented the respondent through a valid special power of attorney. He stated that he had represented the respondent at the District Land and Housing Tribunal (DLHT) and continued to do so in this appeal, as the power of attorney granted him the power to prosecute even the appeal.

Mr. Maalim further added that Sections 18 and 30 of the Land Disputes Courts Act (LDCA), Cap 216 [R.E 2019], empower any party to be represented by an advocate, an attorney, or even a member of the household. With this insight, he prayed the court to acknowledge his representation as lawful in this case.

In his brief rejoinder, the appellant, being a layman, stated that if the law allows such representation, then the matter should proceed with the hearing.

After the submissions by both parties, I adjourned the matter to scrutinize the validity of the power of attorney granted to Maalim Abeid Mikongo.

To satisfy myself on this issue, I first examined the records of the District Land and Housing Tribunal (DLHT). Within the file, I found a special power of attorney signed by the Donor, Mwinyi Alawi Yusuph Mchoma, and the Donee, Maalim Abeid Mikongo, on 1<sup>st</sup> February, 2023 which was received by the DLHT on 27<sup>th</sup> February, 2023.

I also examined the DLHT proceedings and noted that on 31<sup>st</sup> July, 2023 when the matter was called for a hearing, the records indicated that both the applicant and respondent were present. The DLHT recorded;

*Wadaawa wote wapo. Mjibu Maombi anawakilishwa na Maalim Abeid akiwa na power of attorney (All parties are*

*present. The respondent is represented by Maalim Abeid with a power of attorney).*'

The issue raised by the appellant centred on the legality of the power of attorney given to Maalim Abeid Mikongo by the respondent. While the appellant questioned its validity, the Donee of the power of attorney argued that it was genuine, citing Sections 18 and 30 of the LDCA.

Indeed, Sections 18 and 30 of the LDCA permit a party to the proceedings to appear in person, or be represented by an advocate, any relative, any member of the household, or an authorized officer of a body corporate. The only exception is at the Ward Tribunal, where advocates are not allowed. I have no issue with these two sections.

Likewise, I have no issue with acknowledging that the power of attorney was legally registered and followed all the required procedures for registration. The question, however, is whether there were any good reasons for the respondent to grant a power of attorney to Maalim Abeid Mikongo despite it being lawfully registered.

It should be noted that the primary purpose of a power of attorney is to ensure that the Donor's intentions are carried out when he is unable to do so himself due to medical incapacity or illness, travel or living abroad, old age or any other circumstances specified by any law.

Various cases from this court and the Court of Appeal have explained the circumstances under which a power of attorney can be granted. For example, in the case of **Monica Danto Mwansasu (by virtue of powers of Attorney from Atupaksye Kapyela Tughalagha) v. Esrael Hosea & Another**, Land Revision No. 2 of 2021 HC Mbeya, reported in Tanzlii, this court had this to say;

*'As to which are the legal conditions (genuine reasons) for a proper representation by power of attorney, in my settled view, are all reasons which may, before the eyes of the law, legitimately cause undue hardship for a party to appear and defend his case. They include, and not limited to; established long-standing absence from the country or jurisdiction of the court, and inability for prolonged serious illness or old age... Other factors of the like, being beyond the control of the party to proceedings, may form genuine reasons for the representation'*

Yet, in the case of **Jacqueline Tibamanya v. Maximillian Ponsion**, (PC) Civil Appeal No. 26 of 2022, HC Bukoba it was stated;

*'It is common knowledge that there must be reasons to grant the power of attorney; for instance, where the grantor is outside the country, or that he/she has encountered a serious accident which has caused incapacitation or the grantor is seriously sick or too old, and any other reasons recognized by the law as the case may be'*

Again, in the case of Abdul Rahim Jamal Mohamed( suing through his lawful Attorney Fauzia Jamal Mohamed) **v. Watumishi Housing Company Ltd**, Civil Appeal No 54 of 2021, CAT reported in Tanzlii, the Court of Appeal underscored that;

*'With respect, we agree with the learned counsel as we are satisfied that notwithstanding the provisions of Order III rule 2(a) of the Civil Procedure Code (the CPC) which allows court representation through an attorney, that provision must be limited **to persons outside the jurisdiction of the court.** As alluded to earlier, **both the Donor and Donee of the power of attorney were within the same jurisdiction of the court.** Accordingly, the prosecution of the suit by Fauzia Jamal Mohamed as an attorney of the appellant was highly irregular. Any of her actions in the trial court was invalid...'*[Emphasis Added]

Reading through the special power of attorney presented in the DLHT, nowhere did the Donor specify the reasons for granting this special power of attorney to the Donee. The document simply states that he nominated Maalim Abeid Mikongo to;

*'Prosecute the suit, application, and appeal or seek other legal remedies if the need arises, also to sign, execute, and endorse all documents, negotiable instruments like checks, etc., related to the payment of the suit, and to do all things which shall seem necessary or appropriate with the same*

*effect as if we have done, executed, or performed together to institute, prosecute, appeal, or seek other remedies.'*

Despite the Donor indicating in this power of attorney that he has given the Donee the power to carry out these duties as specified therein, this alone was not enough. The Donee was required, in the power of attorney, to explain why he is unable to carry out these tasks as specified therein and instead decided to grant the power of attorney to the Donee.

Apart from stating any reasons in the power of attorney, at least on the day, the matter went for hearing and before the commencement of the hearing of this case, the DLHT would have been informed of why the respondent was being represented by power of attorney. However, despite both the applicant and the respondent being present and Mr. Maalim Abeid also being present, no reasons whatsoever were provided as to why the power of attorney was issued.

Not only that but also, the DLHT records indicate that from the beginning of the proceedings until the day the decision was delivered, the respondent, who is the Donor of the special power of attorney, was present. If this is the case, then why was a power of attorney necessary?

The cited Court of Appeal case, when determining the validity of a power of attorney, posed the question of whether a person who is within

the court's jurisdiction could appoint another person to prosecute a case in court on their behalf. The court observed that this would not be proper.

In the case at hand, as I have stated, the records reveal that both the Donor and Donee live in the same area. Therefore, it was not appropriate for the Donor to grant a special power of attorney to the Donee. Besides, it was unjustified to grant the power of attorney without providing sufficient reasons for doing so.

Furthermore, the DLHT proceedings reveal another issue; Mr. Maalim, who was granted the power of attorney, was conducting cross-examinations of the applicant's witnesses and re-examinations of the respondent's witnesses. This conduct went far beyond the scope of his power and amounted to acting as an advocate, which was improper.

It is important to note that a power of attorney does not automatically grant the Donee the right to represent the Donor in legal proceedings as an advocate. The conduct taken by Mr. Maalim in this case clearly shows that he was acting like an advocate, which is improper and illegal.

The purpose of having criteria for granting a power of attorney is not by chance; it is intended to assist a party who is incapable of attending the court or tribunal due to the reasons stated above, allowing them to grant power of attorney to represent them in specific issues. It is not

meant to appoint someone as their advocate while the Donor is present as in this case.

In light of these considerations, the court invokes its revisional powers under Section 43 (1) (b) of the Land Dispute Courts Act, Cap 216 R.E. 2019. Consequently, the court nullifies the entire proceedings, quashes the judgment, and sets aside the resultant decree issued by the trial court on 26<sup>th</sup> January , 2024.

With these findings, there is no competent appeal before this court. Therefore, I proceed to strike out the purported appeal with costs. Anyone wishing to pursue this matter further may reinstate it afresh in a court or tribunal with competent jurisdiction to hear the case.

It is so ordered.

**Dated at Mtwara this 19<sup>th</sup> June 2024.**



**M.B. Mpaze**

**Judge**

**Court:** Ruling delivered in Mtwara on this 19<sup>th</sup> day of June 2024 in the presence of Hamis Abdallah Samora the appellant Mwinyilawi Yusuph Mchomba respondent and Maalim Abed Mikongo



**M.B. Mpaze**

**Judge**

**19/6/2024**