

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 28211 OF 2023

(Arising from Land Application No. 61 of 2022 in the District Land and Housing Tribunal of Babati at Babati)

NESTORY MARTIN..... APPELLANT

VERSUS

MARIAMU ATHUMANI SWALEHE (suing as Administratrix of the Estate of the Late Athumani Swalehe) RESPONDENT

RULING

14th and 15th March 2024

MIRINDO J.:

The respondent, Mariamu Athumani, successfully sued before Babati District Land and Housing Tribunal as administratrix of the estate of the late Athumani Swalehe for a declaration that a certain piece of land in Magugu Ward within Babati District belonged to the estate of the deceased Athumani Swalehe Kimu.

The appellant appealed to this Court on three grounds of appeal and he appeared at the hearing of the appeal while the respondent defaulted on her appearance. After ordering hearing of the appeal *ex parte*, this Court raised a preliminary point for consideration: Whether the land dispute in this appeal went



through “settlement” before Magugu Ward Tribunal. The duty of prior settlement is mandated by the provisions of section 13 (4) of the Land Disputes Courts Act [Cap 216 RE 2019) as introduced by section 45(c) of the Written Laws (Miscellaneous Amendments) (No 3) Act No 5 of 2021. The appellant’s response to this point was that the dispute did not go through settlement before Magugu Ward Tribunal. In her pleading before Babati District Land and Housing Tribunal, the respondent stated that for more than one month the Magugu Ward Tribunal could not undertake settlement.

There is no doubt that section 13 (4) of the Land Disputes Courts Act [Cap 216 RE 2019] allows a district land and housing tribunal to assume jurisdiction where settlement is not forthcoming after the complaint was presented to the ward tribunal within thirty days. However, the impossibility of obtaining settlement before a ward tribunal is substantially a question of evidence. Barring Mariamu’s assertion in her pleading, neither did the Babati District Land and Housing Tribunal frame the issue to determine its truthfulness nor did Mariamu prove that fact.

Consequently, I hold that the Babati District Land and Housing Tribunal overlooked the statutory requirement that land disputes should undergo settlement in ward tribunals before a district land and housing tribunal can exercise its original jurisdiction.

For this reason, I invoke the revisional powers of this Court, and quash the proceedings, set aside the judgment and decree of the Babati District Land and



Housing Tribunal. It follows that there is no appeal before this Court for determination. The respondent is at liberty to commence settlement before a competent ward tribunal and, if still aggrieved, institute fresh action subject to law. Each party to bear its own costs.

Order accordingly.

DATED at BABATI this 14th day of March 2024



F.M. MIRINDO

JUDGE

Court: Ruling delivered in chambers this 15th day of March 2024 in the presence of the Appellant and in the absence of the Respondent. B/C Lackson Rojas present.



F.M. MIRINDO

JUDGE

15/3/2024