

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 90 OF 2019**

*(From the Decision of the District Land and Housing Tribunal of Mkuranga District at  
Mkuranga in Land Case Application No. 2 of 2017)*

**DANIEL MATIKU WEREMA.....1<sup>ST</sup> APPELLANT**

**RASHID MTOLYA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**MESHAKI ARONI DOSHA.....1<sup>ST</sup> RESPONDENT**

**ATHUMANI SEFU KINOGE.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of Last Order: 22.07.2021*

*Date of Ruling: 22.09.2021*

**OPIYO, J.**

Four grounds of appeal were advanced by the two appellants herein above as follows:-

1. That, the learned chairperson erred in law in finding that the 1<sup>st</sup> respondent is the lawful owner of the disputed land.

2. That, the learned chairperson erred in disregarding the opinion of assessors.
3. That, the learned chairperson erred in relying on exhibits (sale agreements) which were defective in substance.
4. That, the learned chairperson erred in disregarding the evidence of DW2 and DW3 during the trial.

When the matter came for hearing on the 13<sup>th</sup> of August, 2020 the learned counsel for the appellants, Mr. Ezekiel Joel in absence of the of the respondents notified the court that, the records show that the 2<sup>nd</sup> respondent who was the 3<sup>rd</sup> defendant at the trial tribunal is now deceased. The information about his death reached the trial tribunal before hearing of the case began. The first respondent as the plaintiff at trial did not make application to implead the administrator of the estate of the second respondent and they could not possibly change the same at appeal level. As the other side was not in attendance he prayed for the court's direction on the matter. Consequently, the court asked the parties to address it by way of written submission on the competence of the appeal before it based on those facts.

In addressing the court Mr. Ezekiel reiterated knowledge of the trial court about the death of the second respondent. He then continued to state that irrespective of that no application for impleading the administrator of the

deceased estate was made by the 1<sup>st</sup> respondent as he was the plaintiff in the said case. The case proceeded *ex-parte* against the deceased until final orders were given which contrary to provisions of order XX111 Rule 4(1 and (3) of the Civil Procedure Code, Cap. 33 RE 2019 which provides for abatement of the suit against a deceased defendant. He insisted that the trial tribunal would have invoked the mandatory provisions of Order XXII Rule 4 (3) of the Civil Procedure Code (*supra*) and declare that the suit has abated against the deceased (2<sup>nd</sup> respondent). This being the mandatory procedure, non-compliance with it is fatal and has led the whole proceedings of the trial tribunal illegal hence null and void. He therefore, invited the court to exercise its powers under section 42 of the Land Disputes Courts Act, Cap 216, R.E 2019, revise the decision of the trial tribunal and order a trial *de novo* for the interest of both parties.

His argument was supported by Mr. Gabo, counsel for the 1<sup>st</sup> respondent who agreed to the fact that the trial tribunal was aware of the death of the 2<sup>nd</sup> respondent, but did not make the matter abate on his part. He therefore, prayed for nullification of trial courts proceedings and ordering fresh start.

Having gone through the submissions of the counsels for the parties, without unnecessary hesitation, I agree by both that there is an error apparent on face of records with regard to the procedures followed after the report of death of the 2<sup>nd</sup> respondent (3<sup>rd</sup> respondent by then) reached the trial tribunal. On page 2 of the judgment of the trial tribunal, the learned chairperson admitted to have knowledge of the death of Mr. Athuman Sefu



Kinoge (3<sup>rd</sup> respondent). He noted that the deceased family was notified about the existence of the case and cared less to appoint the administrator to take over the deceased part in this case, hence an order was given that the same shall proceed *ex parte* against the 3<sup>rd</sup> respondent (deceased). This observation by the trial chairman was totally contrary to the law as it goes against the mandatory provisions of Order XXII Rule 4 (3) of the Civil Procedure Code, Cap 33 R.E 2019 which provides that; -

*"Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant."*

As rightly observed by the counsels for both parties, after the trial chairperson was satisfied that the deceased family did nothing to appoint the administrator of the deceased estate to step into his shoes particularly in the case at hand, it was supposed to invoke the mandatory provisions as quoted above and make a declaration that the suit has abated against the deceased, rather than ordering the same to proceed *ex-parte* against him. That being the case, it is obvious that the trial tribunal acted against the law and the same actions have rendered the whole proceedings, judgement, and orders of it be null and void.

In consequence, I find it inevitable to exercise this court's revisional powers under section 42 of the Land Courts Disputes Act, Cap 216, R.E 2019, to nullify proceedings, judgment and decree of the District Land and Housing tribunal for Mkuranga in respect of Land case Application no. 2 of 2017. File

is remitted back to the trial tribunal for trial *de novo* before a different chairperson and new set of set of assessors. No order as to costs.



**M.P. OPIYO,**

**JUDGE**

**22/9/2021**