

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

**MISC.LAND APPEAL No. 269 OF 2021**

*(Appeal from the decision of the District Land and Housing Tribunal for Ilala in Land Application No. 171 of 2013 and Land Application No. 309 of 2015 dated 07/06/2021)*

**NEHEMIA STEPHEN KEKEZA.....1<sup>st</sup> APPELLANT**

**VERSUS**

**ADAM SALUM LIBUNDA.....1<sup>st</sup> RESPONDENT**

**RAYMOND GILBERT URONU.....2<sup>nd</sup> RESPONDENT**

**MARIA MELKIOR EKSAVER.....3<sup>rd</sup> RESPONDENT**

**SOSTENES KARUMUNA.....4<sup>th</sup> RESPONDENT**

**ALBERT JOHN PETER.....5<sup>th</sup> RESPONDENT**

**TAUSI SHABAN KISENGA.....6<sup>th</sup> RESPONDENT**

**SAMOYE SAID KAMBONA.....8<sup>th</sup> RESPONDENT**

**FREDY OWINO OGUNDE.....9<sup>th</sup> RESPONDENT**

**SIWEMA HABIBU.....10<sup>th</sup> RESPONDENT**

**MIRAJ MOHAMED LISONGOLE.....11<sup>th</sup> RESPONDENT**

**STELLAH LEONARD BASHANGE.....12<sup>th</sup> RESPONDENT**

**ELIKILA A. MWANGA.....13<sup>th</sup> RESPONDENT**

**EDWARD POTDAS PONSIAN.....14<sup>th</sup> RESPONDENT**

**RAMADHAN JOSHWA SULTAN.....15<sup>th</sup> RESPONDENT**

**JAIDA ADAM MTABAZI.....16<sup>th</sup> RESPONDENT**

**KHALIFA ABDUL KINASHA.....17<sup>th</sup> RESPONDENT**

## **JUDGMENT**

*11/8/2022 & 07/09/2022*

### **Masoud. J.**

This appeal emanates from the consolidated judgment of the Ilala District Land and Housing Tribunal (trial Tribunal) in Land Applications No. 171 of 2013 and Land Application No.309 of 2015. The material background to the dispute are as follows, albeit briefly:

Adam Salum Libunda (1<sup>st</sup> Respondent herein) instituted Application No.171/2013 in the trial Tribunal before Hon. Rugarabamu. The first respondent claimed that the appellant trespassed on his piece of land. The first respondent went on to state that he came into possession of the disputed land after the demise of his late father Salim Shomari Libunda.

On his part, the appellant raised a counter claim in his written statement of defense, claiming to be declared the lawful owner of the disputed land. In relation to his counterclaim, the appellant submitted that he purchased the disputed land in 2002 from Mohamed Pazi.

The trial Tribunal on 14/08/2015 dismissed the main case for want of prosecution, and thereafter proceeded to hear the counter claim ex parte. When the matter was fixed for hearing of the counter claim, it came to the knowledge of the presiding Chairman that there was another suit/application which was similar to the counter claim before him with same

parties and for the same subject matter. The said matter was Application No.309 of 2015. The said learned Chairman decided to disqualify himself from hearing of the two Applications/suits to avoid having contradicting decisions.

As a result, the two matters were assigned to another chairperson, namely, Hon. Rugarabamu. The hearing of the counter claim was adjourned, pending the closure of the Application No. 309/2015 so that a consolidated judgment could be entered. And it was actually entered on 07/06/2021. Aggrieved by the said decision, Nehemia Stephen Kekeza, the appellant herein, decided to challenge it by way of appeal before this court on six grounds as follows;

- 1. That, the hon. Tribunal chairperson grossly erred in law and fact by entertaining Land Application No. 171 of 2013 preferred by the 1<sup>st</sup> Respondent in his personal capacity yet he had no locus standi to do so.*
- 2. That, the impugned judgment is tainted with illegality as the 1<sup>st</sup> respondent was not joined in Land Application No.309 of 2015, yet he was a necessary party because the 2<sup>nd</sup> to the 17<sup>th</sup> Respondents alleged that, they bought their respective plots from him.*

3. *That, the Hon. Tribunal Chairperson grossly erred in law and fact by weighing the evidence of the appellant's counter claim in Land Application No. 171 of 2013 which was null and void with evidence of the 2<sup>nd</sup> to the 17<sup>th</sup> Respondents in Land application No.309 of 2015 to arrive at a judgment that the 2<sup>nd</sup> to the 17<sup>th</sup> Respondents are the lawful owners of the suit property yet these two cases, the appellant was impleaded by two different parties.*
4. *That, the Hon. Tribunal Chairperson grossly erred in law and fact by issuing a judgment which combined the two different cases in one, that is Land Applications No. 171 of 2013 and 309 of 2015 yet the appellant was not heard in Land Application No309 of 2015*
5. *That, the hon. Tribunal chairperson grossly misdirected herself and misconstrued facts to arrive at a conclusion that the 2<sup>nd</sup> to the 17<sup>th</sup> Respondents are the lawful owner of the suit property by relying on exhibits P.1 and P.8 which did not comply with the mandatory requirement of stamp duty Act, Cap 189. R.E 2019.*
6. *That, the Hon. Tribunal Chairperson grossly misdirected herself and misconstrued facts to arrive at a conclusion that the 2<sup>nd</sup> to the 17<sup>th</sup> Respondents are the lawful owner of the suit property yet their evidence was not corroborated by the vendor (1<sup>st</sup> respondent).*

Based on the above grounds of appeal, the appellant invited the court to allow this appeal and set aside the judgment and decree of the trial Tribunal and order costs.

The appeal proceeded by way of filing written submissions. Both parties were represented. While the appellant enjoyed the service of Mr. Daniel Oduor, Advocate; the respondents were represented by Mr. Hamza Abraham Senguji, Advocate.

Considering the brief history of this appeal, and having gone through the grounds of appeal, I saw it fit to start with the fourth ground of appeal on allegation of procedural irregularity which I think will dispose of the matter. The issue is whether the trial tribunal was correct to consolidate two different suits and compose a single judgement.

The main complaint of the appellant was that the chairperson weighed evidences in the counter claim in Land Application No. 171 of 2013 which was heard ex parte with the evidence adduced in Land Application No. 309 of 2015 which was heard in the absence of the appellant. As far as Mr. Senguji, learned Advocate, was concerned, the Chairperson was correct to consolidate the two suits since the tribunals are not bound to strictly adhere to rules of procedure.

As earlier shown, there was Land Application No. 171 of 2013 and Land Application No. 309 of 2015. The former case involved the appellant herein and the 1<sup>st</sup> respondent. The main suit was dismissed for want of prosecution. The matter proceeded with the hearing of the counter claim by the appellant herein in the absence of the first respondent herein. The latter case, namely, Application No. 309 of 2015c, was filed by the 2<sup>nd</sup> to the 17<sup>th</sup> respondents against the appellant herein.

Before determining the counter claim in Land Application No.171 of 2013, the trial Chairperson on 18/09/2019 opted to adjourn the said application until all witnesses in Land Application No.309 of 2015 are heard. On 03/12/2020 the chairperson acknowledged the closure of the proceedings in Land Application No. 309 of 2015, and set a date on which he would continue with the counter claim. The counter claim was continued until the closure of the parties' case. Consequently, assessors gave their opinion in respect of both cases, and finally the Chairperson composed a consolidated judgment.

From the above, I am clear of existence of the following procedural irregularities.

**One**, the order that initiated consolidation of these two suits was not obtained from the consent of the parties, neither were the parties

invited to address the court on whether or not the consolidation should be ordered in the circumstances. Rather it was the Chairperson's order.

**Two**, there is no file named as "consolidated suit" which combined the two suits. Rather, it is only indicated on the judgment.

And **three**, the Chairperson used pieces of evidence adduced in the Land Application No. 309/2015 in relation with the evidence adduced in Land Application No.171/2013.

What happened was contrary to the rule of practice that the parties should have been in an a single suit in a consolidated manner. The resulting irregularity, denied parties in Land Application No. 309 of 2015 room to cross examine witnesses in Land Application No.171/2013 and vice versa.

There is no doubt that the irregularity committed goes to the roots of this matter at stake. Consequently, I am inclined to find merit on the fourth ground of appeal which means that I will not have to deal with the other grounds of appeal.

In conclusion, the appeal is allowed in view of my findings on the fourth ground of appeal. Consequently, the decision and proceedings of the trial tribunal are all hereby quashed and set aside. With this outcome,

I direct trial de novo in respect of the two cases, namely, Land Application No.171 of 2013 and Land Application No. 309 of 2015. In the circumstances, I will not make any order as to costs.

Dated and Delivered at Dar es Salaam this 7<sup>th</sup> day of September, 2022.

  
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**B.S. Masoud.**  
**Judge**

