

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

**LAND APPEAL NO.253 OF 2020**

*(From Land Application No. 32 of 2014, by the District Land and Housing  
Tribunal for Mkuranga at Mkuranga.)*

**MAALIMU ABED MIKONGÓ(Administrator of the Estate of the late  
Shamte Kitara).....APPELLANT**

**VERSUS**

**MOSHI YUSUPH NYAMKANGA.....1<sup>ST</sup> RESPONDENT**  
**HASSAN ABASI MTUPA.....2<sup>ND</sup> RESPONDENT**  
**AMINA ALLY NDEMBO.....3<sup>RD</sup> RESPONDENT**  
**MOHAMED ABDALLAH MKENGA.....4<sup>TH</sup> RESPONDENT**  
**HADIJA MUSA MBONDE.....5<sup>TH</sup> RESPONDENT**  
**MOHAMED ABASI MTUPA.....6<sup>TH</sup> RESPONDENT**  
**OMARY ATHUMANI LIKE.....7<sup>TH</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 29.07.2022*

*Date of Judgment: 11. 07.2022*

**T. N. MWENEGOHA, J.**

The appeal arose from the decision of the District Land and Housing Tribunal of Mkuranga District, herein above called the trial tribunal. Before the said trial tribunal, one Athuman Fateha Kitara, acting as an Administrator of the Estate of the late, Mohamed Shamte Kitara, instituted a case against the respondents, vide Land Application No. 32 of 2014. He claimed among others, a declaration that he is a lawful owner of the suit land, measuring 25 acres, located at Rufiji District, formerly the lawful property of the late Mohamed Shamte Kitara. The decision and orders of the trial tribunal came in favour of

the respondents. Now, this appeal reached this court, challenging the decision of the trial tribunal in respect of the suit land basing on the following grounds;

- 1. That, the trial tribunal erred in law and facts by misconceiving the principle of adverse possession.**
- 2. That, the trial tribunal erred in law and in fact by failure to determine the accrual of cause of action of action hence miscalculated the appellant's time limit of instituting his case against the respondent.**
- 3. That, the trial tribunal erred in law and in fact by failing to thoroughly analyse the evidence on face of record that proved the appellant's ownership over the suit premises hence the trial tribunal failed to decide the matter on balance of probability.**

The appeal was heard orally. The appellant appeared in person while the respondents were represented by Advocate Mohamed Mayanga.

However, when I was composing this judgment, I noted that, the appellant was not a party in the original case, vide Land Application No. 32 of 2014. The parties were called to address the court on this issue and complied to the call.

On his part, the Appellant maintained that, he was given a power of Attorney by one Athuman Fateha Kitale (Administrator of the Estate of the late Shamte Kitale) who instituted the case at the trial tribunal. Therefore, the appellant prosecuted the said case on behalf of the Applicant through the said power of attorney. Now, Mr. Athuman Fateha Kitale is no more, and the appellant has been appointed as an Administrator of late Shamte Kitale, therefore, he has filed this case after being appointed as Administrator of the said estate.

Having considered their arguments with regard to the issue in question, this is my decision as far as the competence of the appeal at hand is concerned.

As I have stated, the original case involved one Athuman Fateha Kitara an Administrator of the estate of the late, Mohamed Shamte Kitara against the 7 respondents. These are the records of the trial tribunal. Even though, the Appellant claims to have power of Attorney from the late Athuman Fateha Kitara, the records do not reflect what he said, the name of Athuman Fateha Kitara suing as Administrator of the late Mohamed Shamte Kitara still remain unchanged.

The records are silence as to how and why the appellant (Maalimu Abed Mikong'o) stepped into the shoes of Mr. Athuman Fateha Kitara and filed the instant appeal. Without such record it means that, this appeal was instituted by a wrong person whose interest in this matter is unknown. As he was not the party in the original case, he cannot challenge the decision of the trial tribunal by way of appeal. Without the records showing how he has come about to take such action and his role in relation to the tribunal decision being challenged. As the remedy of Appeal is available to the parties who were involved in the original dispute at the trial tribunal.

To that end, the appeal is hereby struck out for being instituted by a wrong party.

No order as to costs.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**15/09/2022**