

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

REVISION NO. 45 OF 2021

*(Arising from the District Land and Housing Tribunal land Case No. 387  
of 2018 decision made on 09.08.2021 before Hon. Kirumbi -Chairman)*

**NASABA SHABANI Administrator for the  
estate of the late Mwambamoyo Mkilalu) ..... APPLICANT**

**VERSUS**

**KULUTHUMU SELEMANI ..... 1<sup>ST</sup> RESPONDENT**  
**HARUNA RAMADHANI ..... 2<sup>ND</sup> RESPONDENT**  
**WAZIRI ABDALLAH ..... 3<sup>RD</sup> RESPONDENT**  
**TINDI MDEKA ..... 4<sup>TH</sup> RESPONDENT**  
**NELBAT ..... 5<sup>TH</sup> RESPONDENT**  
**WAHIDA SALUM ..... 6<sup>TH</sup> RESPONDENT**  
**MARIAM SALUM ..... 7<sup>TH</sup> RESPONDENT**  
**HELLEN SALUM ..... 8<sup>TH</sup> RESPONDENT**  
**JEAN MWAFONGO ..... 9<sup>TH</sup> RESPONDENT**  
**MALIX AHAZI SANGA ..... 10<sup>TH</sup> RESPONDENT**

**RULING**

*Date of Last order: 10.10.2022*

*Date of Ruling: 13.10.2022*

**A.Z.MGEYEKWA, J**

This is an application for Revision against the decision of the District Land and Housing Tribunal for Ilala at Mwalimu House at Ilala, in Land

Application No. 387 of 2018 delivered on 09.08.2021. The application is brought under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 [R.E. 2019]. The application is supported by an affidavit deponed by Nasaba Shabani, the applicant. The application was contested by the counter affidavit deponed by Waziri Abdallah, the 3<sup>rd</sup> respondent. The remaining respondents did not file their counter affidavit.

A brief background of the matter goes as; Nasaba Shabani, the administrator of the estate of the late Mwambamoyo Mkilalu the applicant institutes a case at the District Land and Housing Tribunal for Ilala against the respondents. He complained that the respondents have trespassed into the suit land of the late Mwambamoyo Mkilalu located at Bonyokwa Kinyerezi. The applicant prayed the tribunal to declare him the lawful owner of the suit land and order the respondents to vacate from the suit land.

On their side, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> 6<sup>th</sup> – 10<sup>th</sup> respondents denied the allegations, the matter proceeded *ex parte* against the 2<sup>nd</sup> and 5<sup>th</sup> respondents. The trial tribunal determined the matter and noted that the applicant's testimony was based on hearsay evidence and that he did not prove that he is the administrator of the estate of the late Mwambamoyo Mkilalu. As a result, the Chairman decided the matter in favour of the respondents.

When the matter came for hearing on 10<sup>th</sup> October, 2022, the applicant was present in person whereas the respondents were represented by Mr. Mohamed counsel holding brief for Ramadhan Churembo, advocate. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> - 7<sup>th</sup> respondents were required to file their replies on the matter related to the law. However, nothing has been filed by the all respondents, to-date, and they had no good reason for the inability to conform to the court schedule. The settled position is that failure to file written submissions or reply, when ordered to do so, constitutes a waiver of the party's right to be heard and prosecute his matter. This position is consistent with the Court of Appeal of Tanzania holding in the case of **National Insurance Corporation of (T) Ltd & Another v Shengena Ltd**, Civil Application No. 20 of 2007 at DSM (unreported), it was held that:

*"The applicant did not file submission on the due date as ordered. Naturally, the Court could not be made impotent by the party's inaction. It had to act ... it is trite law that failure to file submission n(s) is tantamount to failure to prosecute one's case."*

In consequence of the foregoing, it is ordered that the matters be determined *ex-parte*, by considering the application based on the submission filed by the applicant.

In his written submission, the applicant began to narrate the genesis of the matter which I am not going to reproduce in this appeal. The applicant submitted that he was appointed to administer the estate of

Mwambamoyo Mkilalu. He testified that the trial tribunal decision in Land Application No. 387 of 2021 is illegal and tainted with irregularities. The applicant went on to submit that the tribunal he was the only person appointed administrator of the estate of the Mwambamoyo Mkilalu, in Probate No. 304 of 2010, however, the trial tribunal did not recognize him as an administrator of the estate of the late Mwambamoyo Mkilalu, thus, he has opted to file the instant revision which is likely to succeed.

In conclusion, the applicant urged this court to grant his application with costs.

Having gone through the submissions of the applicant it appears that the issue for determination is the whether the application is meritorious. The applicant complained that Chairperson erred in law and fact to decide in favour of the respondents without considering that the suit land was illegally obtained by the respondents. I have gone through the records of the District Land and Housing Tribunal for Ilala in Land Application No. 387 of 2018 and its Judgment, it shows that the applicant lodged a Form No. IV dated 23<sup>rd</sup> March, 2020 at the trial tribunal that shows the applicant was appointed to administer the estates of Mwambamoyo Mkilau.

Reading the title of the case, the applicant is recognized as the administrator of the estate of the late Mwambamoyo Mkilalu. However, in his Judgment, the trial Chairman blamed the applicant for failure to prove

that he was appointed to administer the estate of the late Mwambamoyo Mkilau. For ease of reference, I quote the Chairman's holding on page 11 paragraph 3 of his Judgment as hereunder:-

*“Mdai hakutoa hata nakala ya hukumu iliyomteua kuwa msimamizi wa mirathi ili kuthibitisha kama ni kweli ni ardhi yenye mgogoro ni miongoni mwa mali ambazo ameambiwa azisimamie”*

I have found the above piece of extract speaking it all that the Chairman misdirected himself, as long as, the applicant has attached a Form No. IV, therefore the applicant did not need to tender a copy of the Judgment to show that he was appointed to administer the estate of the late Mwambamoyo Mkilalu. I have considered the fact that the Chairman in his Judgment recognized the applicant as the administrator of the estate of the elate Mwambamoyo Mkilalu. Therefore, it was not correct for the Chairman to hold that the applicant has not proved his case.

For the aforesaid findings, I hold that the trial Chairman's failure to consider the applicant as the administrator of the estates of the late Mwambamoyo Mkilalu is a point of illegality that meets the requisite threshold for consideration as the basis for revising the instant application.

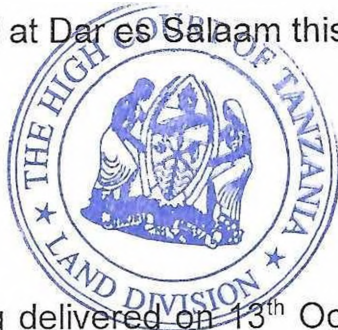
Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceeds to revise the proceedings of the District

Land and Housing Tribunal for Ilala in Land Application No.387 of 2018 in the following manner: -

- i. The Judgment, Decree, and proceedings of the District Land and Housing Tribunal in Land Application No. 387 of 2018 are quashed and set aside.
- ii. I remit the case file to the District Land and Housing Tribunal for Ilala for retrial before another Chairman in accordance with the law.
- iii. Mindful of the long time the matter has taken in court, I direct, the case scheduling be expedited within six months from the date of Judgment.
- iv. No order as to costs

Order accordingly.

Dated at Dar es Salaam this date 13<sup>th</sup> October, 2022.



A.Z.MGEYEKWA

**JUDGE**

13.10.2022

Ruling delivered on 13<sup>th</sup> October, 2022 in the presence of the applicant and Mr. Rashid, counsel holding brief for Mr. Ramadhani, counsel for the respondents.



A.Z.MGEYEKWA

**JUDGE**

13.10.2022