

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

**LAND APPEAL NO. 245 OF 2020**

*(From the Decision of the District Land and Housing Tribunal of Ilala District at Mwalimu House in Misc. Land Case Application No.397 of 2018, dated 5<sup>TH</sup> July, 2017)*

**PAUL NG'WANI..... APPELLANT**

**VERSUS**

**COMMERCIAL BANK OF AFRICA((T) LIMITED...1<sup>ST</sup> RESPONDENT  
EMPIEN COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT  
MUSSA PAUL NG'HWANI.....3<sup>RD</sup> RESPONDENT  
CAROLINE JACKOB MURO.....4<sup>TH</sup> RESPONDENT  
PATRICK TOYI KAHESHI.....5<sup>TH</sup> RESPONDENT  
TAMBAZA AUCTION MARTS GENERAL  
BROCKER.....6<sup>TH</sup> RESPONDENT**

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

*Date of Last Order: 26.05.2022*

*Date of Judgment: 31. 05.2022*

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

At Ilala District Land and Housing Tribunal, here in after called the trial tribunal, the appellant here in above, Paul Ng'hwani instituted a land case against the respondents. He His claim was in respect of a land, located at Ex-Daya Dar Es Salaam City, at Plot No. 2010, with Tittle No. 1186202/106. It was further alleged that, the 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> respondent forged the appellant's signature and mortgaged the said land to the 1<sup>st</sup> respondent with a guarantee from the 2<sup>nd</sup> respondent. When the 2<sup>nd</sup> respondent defaulted in repaying the loan due, the 1<sup>st</sup> respondent

instructed the 6<sup>th</sup> respondent to sell the suit land on auction. However, the 1<sup>st</sup> respondent successfully objected the said suit before the Ilala District Tribunal on the ground that, the same is res judicata. Aggrieved by the decision of the trial tribunal, the appellant lodged the instant appeal based on the following grounds:-

- 1. That, the trial tribunal erred in law and fact for holding that the case was res judicata.**
- 2. That, the trial tribunal erred in law and fact in holding that the appellant conceded to the submissions filed by the 1<sup>st</sup> respondent without proof of the same.**
- 3. That, the trial erred in law and fact for dismissing the appellant's case basing on unfounded reasons.**

Hearing of the appeal was by way of written submissions. The appellant appeared in person while Advocate Alphonse Theophil Nachipyangu appeared for the respondents.

Before venturing into giving background of the case and analysing the facts argued by the parties in their submissions, one thing has caught my attention especially when I was going through the reply submissions by the Advocate Alphonse Theophil Nachipyangu. The respondents counsel brought to the attention of this court the fact touching the competence of this appeal. It was contended by the respondents' counsel that, the appellant herein above has passed away and court was urged to take a judicial notice on that fact.

That, as of now, one Emmanuel Paul Ng'hwani is the one appearing and prosecuting the appeal on behalf of his deceased father. The said person has not taken any steps to notify the court and he has stepped into the

shoes of his father without having any Power of Attorney authorizing him to represent the deceased Paul Ng'hwani. Hence, he lacks the locus to prosecute the appeal unless he attains Administrators.

The appellant (alleged Emmanuel Paul Ng'wani) however, turned a blind eye on this fact when making his rejoinder. He did not address this fact regardless of its sensitivity. Considering the fact that there is said information as I have pointed herein above, it is certain that the passing away of the appellant and the unofficial appearance of the son affect the competence of the appeal at hand.

Further, the silence of the alleged son in addressing this matter leaves me with no choice but to believe that what the respondents counsel has alleged in his reply submissions is true. I have to take judicial notice right from the moment I learned of the information in question.

Hence, without going further into discussing the grounds of appeal, I am of the firm view that, this appeal is unmaintainable. I accordingly struck the appeal owing to the reasons I have given herein above.

No order as to costs.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/05/2022**