

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND CASE APPLICATION NO. 102 OF 2022**

**BETWEEN**

**GABRIEL JOHN KAMI .....1<sup>ST</sup> APPLICANT**

**BEATRICE BYALUGABA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SAID ATHUMAN SIMBA (The Administrator of the Estate  
of the late Athumani Simba..... 1<sup>ST</sup>RESPONDENT**

**JUSTIN RUSIBAMAYILA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Date of last Order: 06/12/2022*

*Date of Ruling: 23/02/2023*

**A. MSAFIRI, J.**

The applicants in this matter are seeking for an order of the court for extension of time to file Revision challenging the decision of the District Land and Housing Tribunal for Kinondoni in Application No. 134 of 2008 dated 18/11/2015.

The application is supported by a joint affidavit of the applicants.

The 1<sup>st</sup> respondent made appearance before the Court and even filed a counter affidavit in contest of the application. The 2<sup>nd</sup> respondent's whereabouts was reported unknown by the applicants, so the Court ordered the 2<sup>nd</sup> respondent to be served by substituted service. The publication was done in

*Atts-*

Mwananchi Newspaper dated 09/6/2022. Despite that, the 2<sup>nd</sup> respondent neither appeared before the court nor filed his counter affidavit so the Court ordered for the matter to proceed in his absence.

On the 1<sup>st</sup> respondent, the applicants had sued one Said Athumani Simba (the administrator of the estate of the late Athumani Simba). Strangely, the person who appeared before the Court and filed the counter affidavit as the 1<sup>st</sup> respondent is one Hassani Athumani Simba.

When he was inquired by the Court on difference of the names, Hassani Athumani Simba (who was appearing in person) admitted that he was not the 1<sup>st</sup> respondent Saidi Athumani Simba. He said that the said Saidi Athumani Simba who was joined in this application as the 1<sup>st</sup> respondent passed away on 05/10/2014. He produced a copy of the death certificate which is a part of court record.

Athumani Hassani Simba claimed that, the person named as the 1<sup>st</sup> respondent has been dead for more than six years and he, Hassani was appointed as the administrator of the estate of Athumani Simba.

However, Hassan Athumani Simba failed to produce any proof that he was appointed an administrator of the estate of Athumani Simba as he claimed.

Mr. Mahfudh Mbagwa, learned advocate for the applicants was asked by the Court to address on the status of Hassan Athumani Simba in the present application.

Mr. Mbagwa responded that since Hassani Athumani Simba is not part of this application and has not produced before the Court a proof that he

*Alle-*

was appointed as an administrator of the estate of Athumani Simba, then he has no locus standi and hence incompetent to appear in this matter. Mr. Mbagwa prayed for the Court to expunge from the court record, a counter affidavit filed by the incompetent Hassani Athumani Simba posing as Said Athumani Simba who was sued as the 1<sup>st</sup> respondent.

Mr. Mbagwa further pointed to the Court about the possibility of there being material irregularities in the proceedings and decision of the District Land and Housing Tribunal for Kinondoni (District Tribunal) in Application No. 134 of 2008. The material irregularities were due to the fact that this Court was informed by one Hassani Athumani Simba that Saidi Athumani Simba who is the administrator of the late Athumani Simba died in October 2014 while the decision in Application No. 134 of 2008 was delivered in 2015. Said Athumani Simba was the applicant in the said Application before the District Tribunal after he was appointed the administrator of the estate of the late Athumani Simba.

In the application at hand, a person who was appearing as the first respondent has no locus standi as he was not Said Athumani Simba (1<sup>st</sup> respondent) so I hereby expunge his counter affidavit from the record of this Court. The 2<sup>nd</sup> respondent's whereabouts was unknown. He was served through publication but failed to appear.

In the circumstances and for the interest of justice, this Court on its own motion, invoked its powers under Section 43 (1) (b) of the Land Disputes Courts Act, and ordered the records of Application No. 134 of 2008. *Alls-*

at Kinondoni District Tribunal be brought before it for the revisional purposes.

Section 43 (1) (b) of the said Act provides thus;

*43 (1) In addition to any other powers in that behalf conferred upon the High Court, the High Court;*

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party **or of its own motion**, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decisions or order therein as it may think fit.*

*(emphasis supplied).*

On 28/12/2022, this Court received the original records of Application No. 134 of 2008 from the District Land and Housing Tribunal at Kinondoni for revisional purpose.

Hence this Court's obligation in exercising its revisional powers is to see whether there was/is an error material to the merits of the Application No. 134 of 2008 involving injustice.

I have gone through the proceedings and Judgment of the District Tribunal and I will reproduce a brief history of the matter.

One Athumani Simba (then the applicant) filed a suit against Justin Rusibamayila (then the respondent) seeking for a declaration order that he

*Alls*

was the lawful owner of the farm of about ½ acre located at Boko Dovya, Malindi Bunju Ward, in Kinondoni District, Dar es Salaam. The application was filed on 23 April 2008. The Application was set for hearing before the Hon. Chairman for the first time on 29 May 2008. After framing issues, the applicant's case opened where the applicant Athumani Simba testified as PW1. Another witness one Sudi Mgeni testified as PW2.

On 24/7/2012, the trial Tribunal was informed by the advocate for the applicant that the applicant has passed away. On 01/2/2013, the trial Tribunal was again informed by the advocate for the applicant that, the legal representative of the deceased applicant has been appointed and he is Said Athumani Simba. The letter of appointment was produced before the said Tribunal. The Tribunal ordered that the administrator be substituted in the place of the deceased applicant. No more witnesses testified except for PW1 and PW2. On 12/11/2014, the applicant's advocate prayed to close his case.

The respondent failed to appear and defend his case despite the fact that his advocate has appeared several times. So, on 19/9/2015 after several adjournments, the Tribunal pursuant to Order XVII Rule 3 of the Civil Procedure Code, Cap 33, R.E 2002, marked the defence case closed and delivered its decision on 18/11/2015 which was in favor of the applicant.

Having gone through the proceedings and judgment of Application, I find that the same contain gross error material which goes to the merit of the case and which renders the decree to be un-executable.

The reason for my finding is that according to the proceedings, the applicant Athumani Simba passed away in 2012 while the hearing of the

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application was proceeding before the trial Tribunal and substitution was done whereby the deceased was replaced by the administrator Said Athumani Simba.

Surprisingly, despite the order of the Tribunal, no changes were made to the parties to the case as the applicant remained to be Athumani Simba, the deceased instead of Said Athumani Simba, administrator of the estate of Athumani Simba.

This gross error is clearly seen in the Judgment and Decree of the trial Tribunal which was delivered on 18/11/2015 whereby the judgment still name the applicant as Athumani Simba. The decree in Application No. 134 of 2008 cannot be executed because then how can a deceased person execute a decree? This is injustice to all parties of the dispute.

Another error material is that, the proceedings of the trial Tribunal does not reveal that even Said Athumani Simba, who was appointed administrator of the estate of Athumani Simba and step into the shoes of the deceased, passed away on 05/10/2014. He died while Application No. 134 of 2008 was still pending before the trial Tribunal. This death was proved by the copy of certificate of death which form part of this Court's records.

However, no information or notice was issued to the trial Tribunal to inform that the administrator of the estate of the deceased applicant was also dead. So, the hearing of application continued through the advocate while the applicant was deceased. It is not clear from where and whom the advocate for the applicant was receiving his instructions after the demise of his client. *Alle*

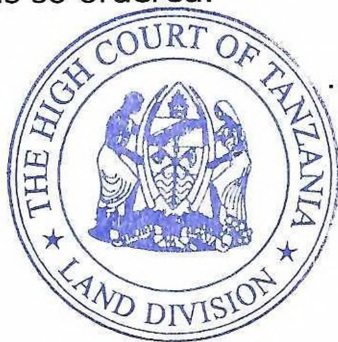
Looking at the proceedings, from 12/11/2014 to the date of judgment i.e. 18/11/2015, the Application No. 134 of 2008 had no applicant. There is no evidence whether there was prayers by the counsel for the applicant for substitution or whether another person was appointed to be the administrator after the death of the two i.e. Athumani Simba and later his son Said Athumani Simba who was the administrator of his estate.

So, it is my finding that the judgment of the trial Tribunal in Application No. 134 of 2008 which was delivered on 18/11/2015 and decree of the said Application which was delivered on 18/11/2016 contain gross irregularity which goes to the merit of the case. The decree cannot be executed and this is gross injustice to either party to the suit.

Having established that there was an error material to the merits of the case which cause injustice, I proceed to quash and set aside the proceedings, judgment and decree in Application No. 134 of 2008 before Hon. R. Mbilinyi at the District Land and Housing Tribunal for Kinondoni District at Mwananyamala.

I make no order for the costs as the Court has moved on its own motion.

It is so ordered.



*A. Msafiri*

**A. MSAFIRI**  
**JUDGE**  
**23/2/2023**