

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

LAND APPEAL NO. 62 OF 2024

(Arising from Land Application No.327 of 2014, of the District Land and Housing Tribunal for Kinondoni)

NURDIN SAID MBALIJE.....	1ST APPELLANT
PILI SIMFUKWE.....	2ND APPELLANT
AMINA RAJABU.....	3RD APPELLANT
ROSE JACOB.....	4TH APPELLANT
ANNA WANGANO.....	5TH APPELLANT
STEPHEN BERNARD KADEGE.....	6TH APPELLANT
OLIVER ALBART MBONIKA.....	7TH APPELLANT
TUNZO TASANI.....	8TH APPELLANT
ZUHURA MAKUKA.....	9TH APPELLANT
FAUSTINE INNOCENT.....	10TH APPELLANT
SHAMZANI JUMA.....	11TH APPELLANT
MOHAMED MAKOKA.....	12TH APPELLANT
GODWIN OSWALD MBISE.....	13TH APPELLANT
HAMIS SHABANI.....	14TH APPELLANT

VERSUS

**PROF. JUMANNE ABDALLAH MAGHEMBE (Through his Attorney
TVALIBU ABDALLAH MAGHEMBE)RESPONDENT**

J U D G M E N T

Date of Last Order: 13.01.2024

Date of Judgment: 28.03.2024

T. N. MWENEGOHA, J.

The following are the grounds, forming the basis of this Appeal; -

- 1. That, the Chairperson of the Tribunal, erred in law and in facts by admitting a Power of Attorney as P1 which allowed**

one Twalibu Abdallah Magembe to file Land Case No. 327 of 2014.

- 2. That, Chairman of the Tribunal erred in law and in facts, by declaring the Applicant the lawful owner of the disputed land based on the poor evidence on the part the applicant.**
- 3. That, the Chairman of Tribunal erred in law and facts, without evaluated and proper analysis of oral and documentary evidence adduced and tendered by the applicant.**
- 4. That, the Chairman of Tribunal erred in law and in facts by declaring the applicant the lawful owner of the disputed land based on the evidence which are contradictory with the pleadings of the applicant.**
- 5. That, the Chairman erred in law and in facts by not admitting the documentary evidence by the appellants here in based on the technical grounds.**
- 6. That, the Chairman erred in law and in facts by ignoring the facts that the appellants here in have been in occupation on the prescribed disputed lands for more than 12 years.**

The Appeal was heard through Written Submissions. Advocate Vedastus S. Majura appeared for the appellants while the respondent was represented by Advocate Salha Ramadhani Hamis. Either, the counsel for the appellant abandoned the 4th and 5th grounds of the Appeal. Hence the case remained with four grounds.

Submitting on the 1st ground, Mr. Majura was of the view that, the Power of Attorney which was admitted as Exhibit P1 by the trial Tribunal in Land Application No. 327/2014 does not disclose any reason as to why such

representation ought to be made. Above all, the applicant in the said case which was prosecuted for 9 years at the Tribunal, one Prof. Jumanne Magembe has never appeared at the Tribunal. That, the said Power of Attorney is incurably defective, thus the whole proceedings of the Trial Tribunal are illegal. To beef up his submissions, he cited the case of **Monica Danto Mwansansu (By virtue of Power of Attorney from Atupakisye Kapyela Tughalaga) versus Esrael Hosea & Another, Land Revision No. 2 of 2021, High Court of Tanzania, at Mbeya (unreported).**

In reply to the 1st ground of appeal, the respondent's counsel insisted that, the arguments by the appellant's counsel are devoid of merits. That, Exhibit P1 was admitted at the Trial Tribunal without being objected. Therefore, the appellants are barred to raise that issue at this stage as it is an afterthought as stated in **Titus Mwita Matinde versus Daniel J. Singolile, Misc. Civil Application No. 3 of 2022, High Court of Tanzania at Shinyanga.**

Rejoining on the 1st ground, the appellants' counsel reiterated his submissions in chief.

I will resolve the 1st ground first before venturing into the other grounds of Appeal. The centre of contention on this ground is the legality of the Power of Attorney, admitted as Exhibit P1 by the Trial Tribunal. According to the counsel for the appellant, he questioned the said document owing to the fact that it did not state the reasons why the donor has given such powers to the donee. On the other hand, the respondent's counsel called these arguments by the appellant's counsel as an afterthought as Exhibit P1 was not objected when tendered at the Tribunal.

I went through the records and came across the Power of Attorney, tendered by PW1, Twalib Abdallah Maghembe on the 1st September 2016. It is true, as argued by the respondent's counsel that, the records show the said document was not objected when it was tendered on the said dates. However, that fact cannot make this Court turn a blind eye when the issue complained in the case is illegality. Upon perusal of the same, I found that the Power of Attorney has issues that needs to be addressed.

It is important that I highlight at this juncture that in our law, the representation by power of attorney is subject to proof and approved by the Court (See **Monica Donato Mwansasu (by virtue of Power of Attorney from Atupekisye Kapela Tughalada vs. Esrael Hosea and Another, Land Revision No. 2 of 2021, High Court of Tanzania, Mbeya**. There are legal conditions that need to be met before one can represent through a Power of Attorney. (see **Hamidu Ndalaha Magesha Mandagani vs. Raynold Msangi and Reda Farm and Livestock Partners, HCT (Commercial Division) Commercial Case No. 52/2007 Dar es Salaam, Unreported**).

Further, Hon. Utamwa J. in Monica Danto Mwansasu (by Virtue of Power of Attorney from Atupakisye Kapyela Tughalaga, Supra had this to say

".....as to which are legal conditions (genuine) for proper presentation of power of Attorney, in my settled view, are all reasons which may, before the eyes of the law, legitimately cause undue hardship for a party to appear and defend his case. They include and not limited to established and long absence from the Country or jurisdiction of the Court, and inability for prolonged serious illness or old age

.....other factors of the like, being beyond the control of the party to proceedings, may form genuine reasons for representation."

In considering the facts of the case at hand, I find that it falls under a category which needs reasons as to why Power of Attorney was needed. However, the Power of Attorney present does not show why the donor issued it in favour of the donee. As highlighted above the rules governing Power of Attorney's are settled that, the same is issued on a genuine reason or reasons. These reasons are a proof that the donor of the Power of Attorney has a legitimate cause preventing him or her from prosecuting or defending a case before the Court or Tribunal, see **Monica Danto Mwansansu (By virtue of Power of Attorney from Atupakisye Kapyela Tughalaga) versus Esrael Hosea & Another**, (supra) and also the case of **Julius Petro versus Cosmas Raphael (1983) TLR 346**.

Unfortunately, Exhibit P1 did not meet the required conditions set forth on the legality of the Power of Attorney in the eyes of the law. Therefore, it was not supposed to be admitted and used to confer powers to the donee to prosecute the case at the Trial Tribunal on behalf of the donor. For this reason, I find the case at the Trial Tribunal to have been prosecuted illegally as it was done so by a person with no locus standi. Hence the whole proceedings are nullity. The 1st ground is allowed.

Having allowed the 1st ground of Appeal, I see no need to proceed with the other grounds of Appeal. The findings in the 1st ground are capable of disposing the entire Appeal to its finality.

In the end, the Appeal is allowed with costs. The Judgment of the Trial Tribunal is quashed and its Orders are set aside. Parties are set to their previous position and anyone with interest can file a fresh suit.

Ordered accordingly.



T. N. MWENEGOHA

JUDGE

28/03/2024