

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND APPEAL CASE NO. 2117 OF 2024**

*(Appeal against the Judgment and Decree of the District Land and Housing Tribunal for  
Mkuranga delivered on 27<sup>th</sup> December 2023 in Land Application No. 57 of 2028)*

**MWAJUMA NYAMKWASU ..... APPELLANT**

***VERSUS***

**TWAHIRI ATHUMANI NGILINI ..... 1<sup>ST</sup> RESPONDENT**

**RAMADHANI MOSHI MWANGIA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

***15/5/2024 & 18/6/2024***

**GWAE, J**

The appellant, Mwajuma Nyamkwasu, is aggrieved by the decision of the District Land and Housing Tribunal for Mkuranga at Mkuranga, which was delivered on 27<sup>th</sup> December 2023. Before DLHT, one Twahiri Athumani and Ramadhani Moshi Mwangia now respondents (hereinafter 1<sup>st</sup> and 2<sup>nd</sup> respondent) successfully instituted the dispute against the appellant.

The factual background giving rise to this appeal is brief and straight forward. The respondents claimed to be lawful owners of the land estimated measuring 20 acres, located at Mkongo, Nyipera Area,

Rufiji in Coast Region allocated with the same by the village land council since 2003. They alleged to have developed the said land by planting several crops such as cashew nuts, trees, banana, cassava etc until sometimes in November 2018, when the appellant allegedly invaded into the suit land claiming that, the said farm was owned by her late father and grandfather who passed away many years ago. The respondents decided to file Land Application No.57 of 2018 in the District Land and Housing Tribunal for Mkuranga. The Trial Tribunal (**R. Mwakibuja-Esq**) decided in the favour of the respondents by declaring them lawful owners of the suit land.

Through her Memorandum of Appeal, the appellant has raised four grounds of appeal as follows:-

1. That, the Hon. Chairperson erred in law and facts in holding that, the respondents are the legal owners of the land in dispute while they failed to prove the case as required by the law in civil cases.
2. That, the Hon. Chairperson erred in law and fact for failure to evaluate, Scrutinize and consider the evidence adduced by the appellant during the trial.
3. That, the Hon. Chairperson erred in law and facts in determining the matter while the description (location or

address) of the land in dispute was not disclosed in the application as required by the law.

4. That, the Hon. Chairperson erred in law and facts in allowing the Advocate Charles Ngozingozi to represent the applicants while he had no valid practicing licence for almost six (6) years from 1<sup>st</sup> January 2018 to 31<sup>st</sup> December 2023.

Hearing of the appellant's appeal proceeded by way of written submissions, Mr. Joseph Mbogela the learned advocate represented the appellant, while the respondents appeared in person.

Due to the reasons that I shall demonstrate shortly, I will start with the fourth ground of appeal. In support of 4<sup>th</sup> ground of Appeal, Mr. Mbogela submitted that, the respondents were represented by advocate Charles Ngozingozi, whom he alleged to have lacked a valid practicing licence for nearly six years from January 2018 to December, 2023. He thus submitted strongly that, it is only qualified advocates with valid practicing certificates who are authorized to represent parties in court proceedings as per section 41 of the Advocates Act, Cap 34, Revised Edition, 2019.

He faulted the Chairperson for allowing an advocate to represent the respondent without a valid licence, which, according to him, renders the entire proceedings null and void. To support his argument, he cited

the case of **Jaha Juma Jaha vs. The Commissioner for Lands and Others**, Land Case No. 90 of 2015 (unreported-High Court of Tanzania Dar es Salaam).

In their joint reply, the respondents submitted that, the irregularity pointed out by the appellant is curable under article 107A (1) (C) of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time) and Section 6 of the Written laws (Miscellaneous Amendments) Act No. 3 of 2018 introducing the principle of overriding objective. They went on urging that, this court to uphold the overriding objective principle and disregard minor irregularities and unnecessary technicalities in order to achieve the substantive justice. He embraced his argument by citing the case of **Alliance One Tobacco & Another vs. Mwajuma Hamis & Another** Misc. Civil Application No. 803 of 2018, at page 3 and **Dr. Ally Shabhay vs. Tanga Bohora Jamaat** (1997) TLR 305.

In brief rejoinder, Mr. Mbogela reiterated his initial submissions and stated that, the irregularity at hand cannot be cured by Article 107A (C) of the Tanzania Constitution, 1977. He stated that, the case cited by the respondent's counsel of **Alliance One Tobacco vs. Mwajuma Hamis** and **Dr. Ally Shabhay vs. Tanga Bohora Jmaat** (supra) are

misinterpreted. Further, he asked the Court to refer to the case of **SGS Societe Generale de Surveillance SA vs. Engineering and Marketing Ltd**, (Civil Application 84 of 2000) [2003] TZCA 31 (30 October 2003) and re-stated that, the overriding objective does not condone circumventing mandatory procedural rules or overlooking core legal requirements.

Having summarized the competing submissions by the parties and having carefully examined the records of the trial Tribunal in respect of the 4<sup>th</sup> ground of appeal, the issue for determination is whether the irregularity complained of is remediable under the principle of overriding objective and our Constitution.

It is undisputed fact that, at all material time in the trial Tribunal, the applicants now respondents were represented by one Charles Ngozingozi, who is alleged to have no valid practicing certificate since his first appearance before the tribunal on 01/10/2019 until the last hearing date that is on 13/9/2023. In order to be safer in determining this ground of appeal, perhaps it is apposite to have section 39 (1) of the Advocates' Act (supra) reproduced herein under:-

*"39.-(1) Subject to the provisions of section 3, no person shall be qualified to act as an advocate unless—*  
*(a) His name is on the Roll;*

*(b) He has in force a practising certificate; and*

*(c) He has a valid business licence, and a person who is not so qualified is in this Part referred to as an "unqualified person". (Emphasis supplied)*

As entailed by the above quoted statutory provision and as rightly submitted by the appellant's advocate that a qualified advocate is the one who possesses a current practising certificate. Consequently, only qualified advocates are authorized to represent parties in our courts. The same statute has also a statutory prohibition of a lawyer who is not a qualified advocate to enter and represent parties in our courts during judicial proceedings. Section 41 of the Advocates Act, provides:-

*41.-(1) No unqualified person shall act as an advocate, or agent for suitors or, as such, issue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal.*

As it is undisputable fact that, the said Charles Ngozingozi purported to act as an advocate while in real sense he was not a qualified person to be an advocate as required by the law. Therefore, proceedings and any other orders emanates from his appearance before the trial tribunal

are nothing but a nullity in the eye of the law. It is also not only that mischief so done during trial and its resultant decision or order (s) that, are declared a nullity but also any documents signed by him or her during such misrepresentation. How, can justice be achieved through illegal means and how can the acts of one who purports to be a qualified and practising advocate be justified through his or her services rendered illegally? This position was well articulated in **Edson Osward Mbogoro vs. Dr. Emmanuel John Nchimbi**, (Civil Appeal 140 of 2006) [2007] TZCA 15 (20 September 2007), where the Court of Appeal held;

*"After considering the above decisions of those three Commonwealth countries, that is to say England, Kenya and Uganda, we can say that although there is no specific statutory provision on the point, if an advocate in this country practices as an advocate without having a current practicing certificate, not only does he act Illegally but also whatever he does in that capacity as an unqualified person has no legal validity. We also take the liberty to say that to hold otherwise would be tantamount to condoning Illegality. It follows that the notice of appeal, the memorandum of appeal and the record of appeal which were prepared and filed in this Court by Dr. Wambali purporting to act as an advocate of the appellant were of no legal effect."*

See also decision of this court (**Mahimbali, J**) in **Jaha Juma Jaha vs. The Commissioner for Lands and Others**, (*Land Case No.90 of 2015*) [2023] TZHC 19753 (31 July 2023).

I am of the formed view that, if the acts of unqualified advocates are justified by our courts that will tantamount to allowing and entering verdicts in favour of persons who come to our courts with dirty hands seeking justice. I am however alive that illiterate persons may not have access to easily know a lawyer who is not a qualified one to act as an advocate for him or her yet every person is presumed to have known certain laws or rules in force.

While the respondents are not contesting the fact that, they were represented by an unqualified person, yet they have urged this court to cure the situation by applying Article 107A (1) (C) of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time. She also urged this court to invoke the principle of overriding objective as introduced in our country in 2008 through Written Laws (Miscellaneous Amendments) Act No. 3 of 2018. It is a settled law that both Article 107 (A) (1) (C) of the Constitution and the principle of overriding objective are not meant to thwart all rules of procedure in the administration of justice in the country. The position has been



consistently laid down in by the Court of Appeal in numerous decisions for example in the case of **Registered Trustees of Joy in the Harvest vs. Hamza Sungura**, (Civil Appeal 149 of 2017) [2021] TZCA 139 (28 April 2021).

Having discussed the 4<sup>th</sup> ground as herein above, I see no reason to address other grounds of appeal, otherwise it would be a mere academic exercise, which I see no need to do.

In the upshot, I hereby quash the tribunal Coram from 1<sup>st</sup> October 2019 until the last hearing date that is on 13<sup>th</sup> day of September 2023, proceedings, judgment and decree of the trial Tribunal and set aside the orders thereof. I proceed to order an expeditious retrial before another Chairperson. Each party to bear his or her own costs.

It is so ordered.

**DATED and DELIVERED at DAR ES SALAAM this 18<sup>h</sup> June 2024**



**M. R. GWAE**

**JUDGE**