

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL No. 89 OF 2022

(Arising from Land Decree of the District Land and Housing Tribunal of Shinyanga for Shinyanga in Land Application No. 4 of 2022)

**HAMIS SAID@ TSHOMBE ABWAO.....1ST APPELLANT
MALICK NASSORO (Administrator of the Estate of the late
Nassoro Gwama).....2nd APPELLANT
ESTER TIRUGENDA (Administrator of the Estate of the late Gerald
Tirugenda).....3rd APPELLANT**

VERSUS

SIMON MBOJE RESPONDENT

JUDGMENT

30th June & 5th July 2023

MASSAM, J.:

This appeal arises from the decision of the District Land and Housing Tribunal for Shinyanga in Land Application No. 4 of 2022 where the appellants lost the case as the trial tribunal decided in favour of the Respondent hence this appeal. Appellants filed following four grounds appeal on 13/12/2022 as follows;

1. *“That, the Honourable Chairman erred in law and in facts in not holding that a respondent’s suit in trial Tribunal vide Land Application No. of 2022 was hopelessly time barred.*
2. *That, the Honourable Chairman erred in law and facts in holding that house erected on Plot No. 172 Block HH Ndala area within Shinyanga Municipality was fraudulent sold.*
3. *That, the Honourable Chairman erred in law and in not holding that the house on Plot No. 172 Block HH Ndala area within Shinyanga Municipality was sold at a Public auction in the execution of decree of Shinyanga District Court in Civil Case No. 22 of 2000.*
4. *That, the Honourable Chairman erred in facts and in law for nullifying sale of the house on Plot No. 172 Block HH Ndala area within Shinyanga Municipality District Court in Civil Case No. 22 of 2000.”*

The facts as gathered from the records are that, on 13.01.2022 the Respondent at a trial tribunal sued the appellants for a claim that a Tribunal to declare him a lawful owner of the disputed land situated on Plot No. 172 Block H.H within Shinyanga Municipality and order the Appellants by peaceful or forceful to vacate the suit premise and the said house be handled to him without any condition.

The appellants disputed the claim and to vacate the suit premise, they claimed that the house in dispute is a lawful property of 1st Appellant as he purchased in a lawful process. The way back cause of action of this matter is that on 4th November, 2003 the Shinyanga Resident Magistrate vide Civil case No. 22 of 2000 gave order to Gwama Court Broker to evict the judgment debtor one Simon Mboje (the respondent in this appeal) to vacate from the disputed house situated on Plot No. 172 Block H.H Ndala area within Shinyanga Municipality.

The records detail that, before the due course of eviction, the respondent complained to the trial court that, he was not supplied with copies of judgement and proceedings so that to help him to view what transpired in the court to make such order, he said that his efforts were in vain. He couldn't end there, he lodged a complaint letter to the Judge In charge of Tabora High court then to the Chief Justice. The Chief Justice via letter with Ref: JY/C.120/24/VOL.11/6 of on 7 April 2008, informed the respondent through the Judge Incharge of Tabora High court, that the respondent to lodge appeal to the High court so as the court would proceed with the matter at the appellate stage. The respondent implemented the instructions, he lodged the Misc. Civil Application No. 8 of

2011 but very unfortunately, his application was struck out for being incompetent and also the court stated that even if the respondent would succeed, his appeal could be with merit as the respondent had no copies of document to support his appeal as the appellant failed to avail the documents of Civil Case No.22 of 2000.

On 07.10.2021 he lodged a complaint letter to the Regional Commissioner complaining the same that, his house was unlawfully taken. The Office of the Regional Commissioner advised him to refer his claim to the District Land and Housing Tribunal.

It is from the advise of the Regional Commissioner, the respondent filed the Land Application No. 4 of 2022 which the Shinyanga District Land and Housing Tribunal determined the dispute and found the respondent lawful owner of the disputed land house. On 2.12.2022 the respondent lodged the Misc. Land Application No. 106 of 2022 for execution emanating from Land Application No. 4 of 2022, before the execution came into completion, the appellants lodged this appeal with the aforesaid grounds.

At the hearing of this appeal appellants had in the service of Audax Constantine learned Counsel whilst the respondent appeared in person unrepresented.

Mr. Audax was the first person to take a floor on behalf of the appellants, before he started to submit on the presented grounds he prayed that he would argue the 1st ground separately, and the 2nd, 3rd and 4th grounds jointly.

He submitted the 1st ground by stating that the paragraph 6 (A) (12), (13) (14) together with annexure JT together with form of the Ndala Ward tribunal dated on 20/12/2021 concern the case No. 54/2021 all of them show that, respondent was complaining of sale of his house which was sold on 2013 and according to the evidence of the respondent which found at page 21 line 2 and 3 from the top of the page 22 and 23 paragraph 3rd and 4th line, page 24 paragraph 31, bullet 2-5 from the bottom and page 32, 2nd, 3rd and 6th bullet and page 33, bullet No 1, all of them the respondent claimed his house was sold and he challenged to set aside a sale of the said house at the execution of the decree of the Shinyanga Resident Magistrate court in Civil Case No. 22/2000. His

evidence gives support to the defence side by looking the judgment of Shinyanga DLHT, sale which was conducted on 2003, as it was fraudulent.

Mr. Audax argued that, Part 1 of the Schedule of the Law of Limitation Act provide for the suit to set aside sale in execution of decree of court in civil proceedings is required to be brought within 2 years after the arise of cause of action, he said in this matter, the sale was conducted on December 6 2003. He contended that respondent was required to bring it on 2005 November, but he brought it on 2022 after 18 years have elapsed.

He submitted that, it is their opinion that the Chairman was required to dismiss it under section 3 (1) of the Law of Limitation Act. He cited the case of **Promax East LTD vs Maendeleo Bank and five others**, Land Case No. 49 of 2022. He said respondent did not file or challenge the sale on time so the application was filed out of time.

He went on arguing that in record there is nowhere the respondent complied with Order VII Rule 6 of the CPC, he did not show the exclusion of Law of Limitation and the said grounds shown in Section 20,21,22 and 23 of the Law of Limitation of time Act. With thus, Mr. Audax prayed the

court to see that, the said application was filed out of time as it was filed after 18 years as he was required to file his case within 12 years as per Item 22 of Part 1 of the schedule. He supported his point by citing the case of **Bank Ltd vs Phylisian Hassan Mcheni**, Civil Appeal No. 19 of 2019, **M/L P8 International Ltd vs The Trustee of Tanzania National Parks (TANAPA)**, Civil Appeal no. 265 of 2020 (unreported), **Luhumbo Investment Ltd vs national Bank of Commerce and 2 others** at pg 16-18 and **Fortunatus Lwanyatika Masha and another vs Clava Motors Ltd**, Civil Appeal No. 144 of 2019 at pg 14-15. He argued that all those cases were filed out of time.

Another case counsel for the appellants referred to this case is the case of **Stanley Kalama Mariki vs Chihyo Kwisia W/O Nderingo Ngomo**, TLR 1981 at page 43. He insisted that the court stated that the court should not be called upon to revive stail claim to assist a party who does not act reasonably and promptly.

In 2nd, 3rd and 4th grounds Mr. Audax submitted that, the evidence brought show that the house was sold by the order of the court of Resident Magistrate Court in Civil Case No. 22 of 2000 and the complaint raised by the respondent mentioned the said Civil Case No 22/2000, he said, he did

not agree that the house was as the same sold by fraudulently. In this point Mr. Audax prayed this court to see if the sale of the house was proper and find that it was wrong for Chairman to nullify the sale, and the same the one who bought the said house did some development on it. He contended that in paragraphs 6 (A) (xv) of the respondent's pleadings show the same, he argued that it is trite law that bonafide purchaser of the property should not be disturbed after he/she made some development. He referred the court to see the case **Suzana Warioba vs Shija Dalawa**, Civil appeal No. 44 of 2017 at page 6-7 he said in that case, the court cited the case of **Stanley Kalama Masiki vs Chihyo Kwisia** (supra), he said that, in that case the court said that innocent purchaser for value has gone to occupation and affected development in land the court would be slow to disturb such purchaser in desist from reviving stail claims, so because the eviction show that appellants were bonafide purchaser and they were given certificate of sale, and the eviction was done by Resident Magistrate court, and if there was some errors in that eviction, would not be a reasons to disturb the appellants. He therefore prayed the court to allow the appeal.

In his reply, the respondent before he came to submission to the merit of appeal, he noted the court on the following issues;

1. Advocate of the legal aid is required to take client's issues in seriousness
2. Advocate was not required to have personal interest to the client of legal aid
3. Legal aid provide support to have all annexures of his client before preparing documents to take to the court.

In merit of the appeal he submitted that, the Civil case No. 4 of 2022 Civil Case No 54 of 2021 and 22 of 2022 show that the said cases were time barred but counsel for the appellant did not give judgment and Decree, he said when it was asked to be given he said he don't know if are available, he prayed the appellants to show them to this court, he pointed out he filed a case No. 19 of 2016 but appellant failed to appear before the court but it was struck out for want of supporting documents, he said he wrote a letter to the Chief Justice who told him that to go to Shinyanga Resident Magistrate court as they had already communicated with them.

He went on submitting that, he again went to the Minister for Constitution and Legal affairs, there he was advised to go to Takukuru, [PCCB]. Again there he was told that, the court had no exhibits to show

that his house was sold. After he consulted different offices, he said he decided to file a fresh civil case No. 54 of 2021, he pointed that in that case he was ordered to go to normal court, then he went to District Land and Housing Tribunal court where he opened the case No.4/2022 where he won the case as he had exhibit to prove that the house belongs to him since 1982 and the title deed is in his name.

He noted that, the cause of action arose on 2000 in civil the case No. 22/2000 which was dismissed by the court on 18/4/2001. Again he said that he was told that the case No. 18 of 2001 was the one which used to sale his house, but he was not given the Decree and the case had no records but in execution, they took all his properties while there was no Decree and judgement on that issue. He prayed the court to see those appellants are not saying the truth to the court.

Mr. Audax in his rejoinder told the court that, all correspondents from different offices were telling him to appeal against Civil Case No. 22 of 2000 and the same in Civil Misc. Application No. 3 of 2002 the Shinyanga Resident Magistrate court rejected to set aside expert e judgment in Civil Case No. 22 of 2000.

He went on telling that, a Ruling of Lukelelwa J, said that original record was lost in Civil Case No. 22 of 2000 and in its Misc. Civil Application No. 3 of 2002 he was claimed to set aside the expert e judgment No. 22 of 2000 held that he will not order retrial, he upheld the RMS court decision and the issue was settled and all exhibits which were brought by the respondent were not helpful. He insisted the court to upheld the appellants' appeal with costs.

Having considered the grounds of appeal presented, parties submissions and the trial tribunal's records, it is certainly that this court is subject to see **whether this appeal has merit.**

With regards to the grounds of appeal together with the submissions of the counsel for the appellants, I will start to resolve the 1st ground as argued separately. Mr. Audax complained that the trial record specifically the respondent pleadings complained about the sale of his house which said to be sold on 2003. He said respondent challenged the execution of decree of the District Court of Shinyanga in Civil Case No 22 of 2000. Mr. Audax faulted the judgement of Shinyanga District land and Housing Tribunal to nullify the sale which was conducted on 2003. The said tribunal nullified the sale basing on the view that, the sale was obtained by

fraudulently. He was of the view that, the order was against law as per Item 4 Part 1 of the Schedule of the Law of Limitation Act Cap 89 R:E 2022 as it was required that, the suit to set aside sale in execution of decree of court in civil proceedings to be brought within two years after a raise of cause of action.

His argument is that the sale of the house in dispute was conducted on 2003 but respondent brought his case to challenge the sale on December 2022, almost after 18 years. He said the Tribunal was required to dismiss the matter under Section 3 (1) of the Law of the Limitation Act. More also, the above cases cited by Mr. Audax said to be relevant tools to support his position.

The respondent is in claim of challenging the validity of eviction order, said to be emanating from the decree of Civil case No. 22 of 2000 the respondent consisted his claim at the trial and at this appeal that the eviction order by Resident Magistrate court on 4.11.2003 was procured fraudulently as there was no judgment and decree and even, he asked the appellants to show them, they failed to do so. Failure to obtain the said copies of the judgement and decree and after consulted different offices,

he decided to lodge a fresh Land Application No. 4 of 2022 at Shinyanga District Land and Housing Tribunal.

The facts are clearly disclosed on what transpired in the lower courts which led for the respondent to lodge the Land Application No. 4 of 2022 but also I am aware of what the Law of Limitation of Time requires for a person to challenge execution order. Mr. Audax cited enough cases to pursue this court to uphold the appellants' appeal. Mr. Audax prayed this court to look the provision of **Item 4 of Part 1 of the Schedule of the Law of Limitation of Time** which provides that;

"Suit to set aside a sale in execution of a decree of a court exercising civil jurisdiction two years"

And the same law under Section 3 (1) provides that;

"Subject to the provisions of this Act, every proceeding described in the first column of the Schedule to this Act and which is instituted after the period of limitation prescribed therefore opposite thereto in the second column, shall be dismissed whether or not limitation has been set up as a defence"

More precisely Mr. Audax backed his argument with a number of cases as I have noted herein above. My preference is the case of **Luhumbo Investment Limited vs National Bank of Commerce Limited & 2 Others**, Civil Appeal No. 503 of 2020 the Court of Appeal at page 16 cited the case of **John Cornel vs Grevo (T) Limited**, Civil Case No. 70 of 1998 where the court was stated that;

"However, unfortunate it may be for the plaintiff; the law of limitation is on actions knows no sympathy or equity. It is a merciless sword that cuts across and deep into all those who get caught in its web"

Indeed, it is the position of Mr. Audax that respondent filed his case out of time. My duty is to consider all points and arguments for and against but all in all the law should prevail. I have read all cases cited by Mr Audax they persuade me a lot, but the facts available in the records pushed me not look them in lightly manner to avoid a simple trap of injustice with no hook to be rescued, in lightly way, it seems the respondent has nothing to offer before the court as argued by Mr. Audax that respondent failed to act upon his right to stop the execution of sale of his house as the said sale was conducted on 2003 executing decree emanating from the Civil case

No. 22 of 2000 which said to be heard expert by the Shinyanga Resident Magistrate. It is alleged that, respondent since 2000 failed to take action until on 2022 when he filed the Land Application No. 4 of 2022 almost 18 years since the execution was conducted but the records detailed that respondent was not relaxed at home, he was day today knocking in court doors and in different offices to fight for his right. The facts available in the documents annexed the pleadings of the trial tribunal are the things which pushed me to see if the statement of Mr. Audax when submitting in support of the appellant's appeal, he said the judgment of District of Land and Housing Tribunal nullified sale in execution which was conducted on 2003 as it was done fraudulently. The same statement reflected in the pleadings of the trial tribunal as per paragraph (xvi) of the respondent's application. It states that;

"Kwamba, inaonekana kuwa wajibu maombi kwa pamoja walikula njama ya kupora nyumba ya mwombaji kwa njia za udanganyifu ndio sababu hawakutaka kabisa mwombaji kulipa deni lake la shs. 650,000/= mpaka leo"

In light of the statement of Mr. Audax and the contents appeared in the above paragraph, led me to read the trial records more specifically

annexures attached. They disclose that the respondent in Civil case No. 22 of 2000 was sued by one Gerald Tirugenda who is now a deceased, in this matter the deceased is represented by the 3rd respondent who appeared as an administratrix of the estate of the late Gerald Tirugenda. The said Gerald Tirugenda sued the respondent for claim of Tsh. 650,000/= which was loaned to the respondent who set his house as security to the said loan.

It appeared that, the Shinyanga Resident Magistrate court dismissed the case for want of prosecution for the reasons that the Plaintiff in that was not attending the case. Upon the dismissal of the case, the said Plaintiff filed Misc. Civil Application No. 18 of 2001 for restoration of the said Civil Case No 22 of 2000 which was determined ex-parte in favour of the said Plaintiff and the same was restored. The respondent (Simon Mboje) filed Misc. Civil Application No. 3 of 2002 praying the court to set aside the ex parte Judgment. The Misc. Civil Application failed to proceed after both files of Civil Case No 22 of 2000 and Misc. Civil Application No. 18 of 2001 got lost and the effort to retrieve them got failed.

After the two files went missing, the respondent filed the Misc. Application No. 18 of 2003 seeking to pay the Plaintiff so as to rescue his

house from being sold, unfortunately his application was rejected and for short period of time the execution was conducted in absence of the respondent and without being called to defend the application for execution. On due course of execution and attachment the respondent rushed to court to file an application for stay of execution, his application was rejected, the execution of selling of his house proceeded in his absence and on December 2003 he was evicted from his house.

The respondent got no tired he went on fighting for his house this time he went to court asking to be supplied with copies of Judgement and decree so as to lodge an appeal but his efforts got failed, he decided to enforce his right by complaining verbally to the Judge Incharge of Tabora High Court and to lodge complaints letter to the Chief Justice, the Chief Justice Samatta J as he then was, he advised him to lodge appeal without copies of Judgment. One among annexure which proved that the respondent was not supplied with the copies of judgment is the letter with Ref: No. Kumb. Na. JIIC/TC/COM.10/1/COLIII/132 written on 4 Julia, 2006 by the Judge Incharge of Tabora High court addressing to F.L.K Wambali Katibu wa Jaji Mkuu. The said letter is detailed from paragraph 2 that;

Wakati nikiwa hapa Shinyanga kwenye "Criminal Sesslon" nilimwagiza Hakimu Mkazi Mfawidhi, Shinyanga atafute majalada husika. Hilo likishindikana awaite wadaawa ili wampee vielelezo walivyonavyo, hususani nakala ya hukumu na mwenendo wa kesi (copy of proceedings).

Juhudi za kuyapata majalada husika hazikufanikiwa. Bwana Simoni Mboje, mlalamikaji, alisema hakupata nakala za hukumu na proceedings, Bwana Gerald Tirugenda, alikuwa mdai alisema nakala za hukumu na proceedings alizokuwa nazo alizitoa Mahakamani ili kufungua "duplicate file" ambalo kwa sasa halionekani.

Nakala ya barua ya Hakimu Mkazi Mfawidhi, Shinyanga imaembatanishwa.

Hivyo hakuna kumbukumbu za kumwezesha Bwana Mboje kuipinga hukumu iliyotolewa dhidi yake.

Ni maoni ya Hakimu Mkazi Mfawidhi aliyopo Shinyanga sasa kuwa kumbukumbu hizo zimeharibiwa au kupotezwa kwa makusudi. Hivyo amependekeza iundwe tume kuchunguza jambo hilo. Baada

ya uchunguzi Tume hiyo itoe mapendekezo ya nini kifanyike.

Nakubaliana na wazo hilo.

Naomba umpe Mh. Jaji Mkuu maoni hayo.

In responding to the above letter, Hon Chief Justice on 13/4/2006 directed the Judge Incharge of Tabora to take all initiative efforts to handle the complaint of Mr. Simon Mboje to make sure he challenges the judgement against him by way of appeal.

The instructions via Judge Incharge came in hands of the respondent, he complied the directive, at first, he lodged Misc. Civil Application No. 8 of 2011 arising from Civil Case No. 22 of 2000 at Shinyanga in High Court Tabora. In this time the respondent lodged the said application seeking for leave to appeal out of time to challenge the Civil Case No. 22 of 2000, but the luck was not in the hands of the respondent, his application was struck out for being incompetent for citing inapplicable provision of the law, it was therefore struck out from the Registry. Being struck out, it left room for the respondent to rectify his errors to go back to court with proper provision (s) so that his prayers could be considered.

It is from that history the respondent thought that the said decree was obtained by fraudulent means as the said execution of sale was conducted without the judgement and decree of the trial court, if then being the case, the issue that respondent lodged his Land Application No. 4 of 2022 out of time, is in question. Personally, the respondent believe that the execution of sale was procured by fraud, and as per history of his matter the abnormalities the records attracts any reasonable person may believe something evil deliberately was planned to prevent the respondent to be availed him with copies of judgement, Decree and proceedings so that to prevent him and the court to view the entire files in Civil case No. 22 of 2000 and the Misc. Civil Application No. 18 of 2001. Of course, it is trite law that, under the provision of **section 26 (a) (b) and (c) of the law of Limitation Act Cap 89 RE 2022** clearly states that;

Where in the case of any proceeding for which a period of limitation is prescribed—

*(a)- the proceeding is based on **the fraud of the party against whom the proceeding is prosecuted or of his agent, or of any person through whom such party or agent claims;***

(b) The right of action is concealed by the fraud of any such person as aforesaid; or

(c) The proceeding is for relief from the consequences of a mistake,

According to the provision above, the time starts to run after discovery of fraud, though the respondent posed with that allegation that the execution was conducted by fraudulent as per the record, but the allegations remain allegations, nothing proved that the execution of sale was procured by fraud even if the copies of judgement, decree and proceedings were not found, still remain allegations, no fact proving the fraudulent as the respondent tried to put.

Mr. Audax in rejoinder informed the court that, Lukelelwa J held that, original record in Civil Case No. 22 of 2000 is lost, so he upheld the decision of the Shinyanga Resident Magistrate in Misc. Civil Application No. 3 of 2002, it is not true, Counsel for appellant was misconceived on that point, I have read the Ruling by Hon Lukelelwa J, he determined the Misc. Civil Application No. 8 of 2011 arising from Civil case No. 22 of 2000 in the said application, the matter was not determined on merit, but the

application was struck out for reason of competence of the application. It had nothing to do with the upholding any matter emanating from any application from the Shinyanga Resident Magistrate Court decisions.

The fact that, respondent was not supplied with the copies of judgment, decree and proceedings as it was said that, all files subjected to him were lost but those which were subjected to the execution and sale of his house, were available. Thorough inquiry was needed. The loss of those documents could not make it easy for him, the court and any law enforcing machinery could not be able to review what transpired in the said files so as to advise accordingly.

Now what the respondent was supposed to, many of the correspondent letters annexed in the trial file show that, he was advised to file an appeal to challenge Judgement, respondent accorded but the issue was still unsolved as in his hands he had no copies of judgement, decree and proceedings of the trial court, the court couldn't depart from the provision of Order xxxix rule 1 (1) of the Civil Procedure Code Cap 33 RE 2002, the answer is because, the law provides that;

1. (1) Every appeal **shall** be preferred in the form of a memorandum signed by the appellant or his advocate and presented to the High Court (hereinafter in this order referred to as the court) or to such officer as it appoints in this behalf and the memorandum **shall be accompanied by a copy of the decree** appealed from and (unless the court dispenses therewith) of the judgment on which it is founded.

As I have noted above that, after the court had heard the Civil Case No 22 of 2000 and Misc. Application No 18 of 2001 ex parte, the respondent filed Misc. Application No. 3 of 2002 seeking to set aside the ex parte judgement and orders, his application was rejected, the same documents were said to be lost. It means he could not be able to lodge an appeal to challenge the decision as the under **Order XL rule 1 (e) (2) of the CPC** Cap 33 RE 2002 as state that,

1. *An appeal shall lie from the following orders under the provision of section 74, namely*

- (d) *An order rule 13 of Order IX rejection an application (in a case open to appeal) for an order to set aside a decree or judgment or judgement passed ex parte;*
- (2) *The rules of Order XXXIX shall apply, so far may be, to appeal from orders.*

It is not by design but by situation that he had no documents to support him to file an appeal to challenge rulings of the aforesaid application, he was prevented by the circumstances which I have demonstrated Lukelelwa J, in Misc. Application No. 8 of 2011 at page 7 when determining the respondent's application for extension of time, he stated that;

"Even if the application had cited the proper and relevant provisions of law in support of his application it would have been debatable whether an appeal to thus court could be sustained.

The matter was decided ex-parte by Shinyanga Resident Magistrate's court. The applicant lodged an application to

have the ex-parte judgement set aside, that when both files got lost.

Then the court allowed the Respondent to supply the court with Copies of the pleadings, proceedings and ex-parte ruling for the purpose of creating duplicate file which allowed the respondent to apply for execution of the ex parte decree. The applicant rushed to the court to lodge an application for stay of execution, before the latter could be heard, the order for execution of the decree was heard and granted ex parte, and both files again went missing”

I conclude by stating that the respondent was barred by laws and circumstances to lodge an appeal within the prescribed time but he had a sufficient reason for so not doing. Now, should I end up there. The answer is no. why? As the facts detailed that the house in dispute was sold by executing the decree of the court (Shinyanga Resident Magistrate) by evicting the respondent from his house, the eviction order is still valid until when it will be challenged by lawful authorities. With thus it is my view that, it was wrong for the respondent to file Land Application No. 4 of 2022 while the order of RMs court was still valid, rather he was required to

challenge the eviction order of 4th October, 2003 of the Resident Magistrate court by way of appeal.

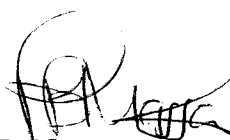
According to the above reasons, I therefore allow the appeal on point that, respondent was need to enforce his right by filling appeal challenging the eviction order which is still unchallenged and its document are available, on doing so he will comply the proper producer in achieving his desire.

With thus, I nullify all the proceedings, Judgment, Decree and any other orders born from the Land Application No. 4 of 2022. Respondent is at liberty to challenge the eviction order dated on 4th October 2003 born by the unknown decree.

It is so ordered.

DATED at **SHINYANGA** this 5th day of July, 2023.




R.B Massam
JUDGE
5/07/2023

COURT: Right of appeal explained