

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 119 OF 2021

(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land Appeal Case No. 257 of 2020, originating from Bwiregi Ward Tribunal in Land Dispute No. 15 of 2020)

GHATI CHACHA

PAULO MTONGORI

}
}

APPELLANTS

Versus

GEORGE JOHN WAMBURA

RESPONDENT

JUDGMENT

18.08.2022 & 18.08.2022

Mtulya, J.:

In the course of proceedings before the **Bwiregi Ward Tribunal** located at Butiama District in Mara Region (the ward tribunal) in **Land Dispute No. 15 of 2020** on 20th July 2020, Ghati Chacha (the first appellant) testified that she was a wife of Mr. Mtongori Nyamagaini (the deceased), who had already expired before 1996, but had left a land belonged to three (3) of his wives, including herself and Tabu Mtongori.

On the same date, 20th July 2020, Mr. Paulo Mtongori (the second appellant) on the other hand, testified that that the land belonged to Mzee Mtongori Nyamagaini. On his part, Tabu Mtongori testified that she barter traded a small part of the

disputed land in exchange of one (1) cattle of Mtamba species to Mr. George John Wambura (the respondent), but to her surprise, the respondent claimed all of her lands. The appellant on his part claimed that he barter traded the land in dispute in exchange with two (2) cattle in 1996 which was equivalent to Tanzanian Shillings Sixty Thousand Only (60,000Tshs). The record was silent on exact land size and materials on *locus standi* or instruments constituting display of representation. After full hearing of the dispute, the ward tribunal decided in favour of the appellants and reasoned, at page 2 of the decision, that: *eneo ni mali ya familia ya Mzee Mtongori Nyamagaini*.

The decision and reasoning of the district tribunal aggrieved the appellant hence preferred **Land Appeal No. 257 of 2020** (the appeal) at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal). The district tribunal decided to nullify both decision and proceedings of the ward tribunal, and pronounced the respondent as a rightful owner of the disputed land, without materials on exact land size or status of *locus standi* of the appellants. It was unfortunate that the district tribunal, declined to invite its powers enacted under section 34(1) (b) of the **Land Disputes Court Act** [Cap. 216 R.E. 2019] (the Act) on calling additional evidence or making inquiries on

the two (2) issues under section 34(1) (c) of the Act, or else, consult the parties on their opinions on the subjects. However, the district tribunal at page 3 of the judgment reasoned that:

Wajibu rufaa walidai kwenye Baraza la Kata kuwa eneo hili lenye mgogoro ni mali ya marehemu Mtongori Nyamagaini na kwamba marehemu Mtongori Nyamagaini, aliacha wake watatu, na kwamba eneo hili alijagawanywa kwa warithi na kwamba eneo hilo ni la familia. Kama hivyo ndivyo Wajibu Rufaa kabla hawajafungua shauri hili walitakiwa kwanza wawe wameteuliwa kuwa Wasimamizi wa Mirathi ya Marehemu Mtongori Nyamagaini. Wajibu Rufani walifungua shauri na kuendesha kesi hii bila ya kuwa na nguvu za kisheria za kufanya hivyo... ni wazi pia kwamba eneo hili bishaniwa liliuzwa kwa mrufani na Mama yake Mjibu Rufaa Namba Mbili (Paulo Mtongori) aitwae Tabu Mtongori.

The district tribunal reasoned so, unaware of the precedent of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021 on the requirements of exact land size, demarcations and location. Similarly, it was unaware of the directives of the Court of Appeal (the Court) in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021,

on the want of instruments constituting the appointment of parties in disputes filed in our courts.

Following this reasoning of the district court, the appellants had opted for two (2) ways in resolving their differences, *viz*: first, filing an appeal with three (3) grounds in his court registered in **Misc. Land Appeal Case No. 119 of 2021** (the misc. appeal) to dispute the decision of the district court in the appeal; and second, filing of a **Probate and Administration Cause No. 8 of 2021** (the probate cause) at **Kiagata Primary Court in Butiama District** (the primary court) praying for letters of administrations of the late Mzee Mtongori Nyamagaini in order to put the record clear. The letter were granted by the primary court on 3rd December 2021.

After the acquisition of the letters the appellant preferred another dispute on 11th January 2022 on the same piece of the land in dispute lodged in **Land Application No. 4 of 2022** (the application) at the district tribunal adding Tabu Mtongori as the second defendant in the application. Following the circumstances surrounding the present appeal, this court *suo moto*, raised the two (2) indicated issues above and invited the two (2) learned minds of the parties who were marshalled to contest the appeal, to state the legal status of the present appeal. The appellant had

invited Mr. Emmanuel Gervas, learned counsel whereas the responded hired the legal services of Mr. Robert Neophitus, learned counsel to argue the misc. appeal.

In cherishing the right to be heard, Mr. Gervas briefly stated that the present appeal has merit for want of a judgment to quash the lower tribunals' decisions which were a nullity for want of proper record, whereas Mr. Neophitus thinks that the lower tribunals' decisions may be quashed in favor of the application in the district tribunal on the same subject matter.

On my part, I think, the move stated by the officers of this court may take its course to avoid confusions in the present appeal and the application. I need not be detained in a situation where there are no materials registered by the parties on the subjects of land size & location and instrument constituting the appointment of the appellants. I am also quietly aware that the application is still placed before the district tribunal for determination on the same land in dispute. The directives of the Court in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another** (supra) is that:

It is now a settled law that where a party commences proceedings in representative capacity, the instrument

constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of necessary standing.

Similarly, the statement in the precedent of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra), stated that:

...for the sake of certainty, prediction and consistency in decisions emanating from this court, I will follow the course...the record in this appeal shows that the Prescribed Form is silent on land sizes and demarcations, the proceedings displays variances on the demarcations marks surrounding the land and the judgment is awarding unclaimed size of land suo moto without evidence or involving the parties in the dispute. Decisions of this kind cannot remain in our courts' records. This is the court of record with additional powers of ensuring proper application of the laws by the courts below. It cannot justifiably close its eyes when it sees breach of the law in Regulation 3 (2) (b) of the Regulations.

Having cited the long paragraph of this court and a passage from the Court as indicated above, I have decided to quash

decisions and set aside proceedings of the lower tribunals in favor of proper application of the law (see: **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra); and **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). I order no costs in the present appeal as the application in the tribunal is on the course to determine the rightful owner of the land and learned counsels of the parties acted as officers of this court in searching justice of the parties.

Ordered accordingly.



F. H. Mtulya

Judge

18.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant's learned counsel Mr. Emmanuel Gervas and in the presence of Mr. Robert Neophitus the respondent's counsel, through teleconference facilities placed at the District Court of Serengeti at Mugumu.

F. H. Mtulya

Judge

18.08.2022