

TANZANIA / JUDGMENT

JUDGEMENT

COURT
TANZLIIDECIDED
1 January 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LAND APPEAL NO. 000014012 OF 2024 ALKADI SUNGURA
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS HUSSEIN OMARY
MPAMBIJE RESPONDENT / DEFENDANT

JUDGMENT

NKWABI, J, 12 & 12/02/2025 The parties to this appeal are contesting over ownership of a piece of land which has a size of one acre situated at Nyamtukula area in Ndagayaga hamlet within Nyachenda ward in Kasulu district. The land dispute in the District Land and Housing Tribunal which was instituted by the appellant was contested by the respondent. After hearing the parties on merit, the trial tribunal dismissed the land case in favour of the respondent. It went further and declared the respondent owner of the piece of land. The decree aggrieved the appellant. He filed this appeal having four grounds of appeal which essentially attacked the trial tribunal for failure to scrutinize properly the evidence on record. The appellant prayed for:

1. The judgment, proceeding and decree of the District Land and Housing Tribunal be declared null and void.
2. The appellant be declared rightful owner of the suit property and
3. Cost of this case be upon the respondent. When the appeal was called on for hearing, both parties appeared in person, unrepresented. The hearing of the appeal proceeded by way of oral submissions. In submission in chief, the appellant stated that he was aggrieved by the judgment of the trial tribunal because the evidence was of a person given by the person who purchased the piece of land but the seller did not go to testify. He revealed that he is the one who instituted the land case. It is upon hearing that there was a seller who did not come to testify, is when I looked at the parties to the suit and found that only the buyer was sued. I called upon the appellant to address me on two matters I observed from the judgment which are: Page. 1

1. If that the position then the suit was incompetent, it ought to be refiled or trial denovo by joining the seller. That is as per Juma B. Kadala v. Laurent Mnkande [1983] T.L.R. 103 HC where this Court held: "... in a suit for the recovery of land sold to the third party, the buyer should be joined with the seller as a necessary party ... non-joinder will be fatal to the proceedings."
1. Further the appellant could not be declared owner of the piece of land, as the trial tribunal did as he had no counter-claim, thus the decision violates the decision in Melchiades John Mwenda v. Gizelle Mbagha & 2 Others, Civil Appeal No. 57 of 2018, CAT, where it was authoritatively stated that: "... the evidence did not prove so on a balance of probabilities and, secondly, the second respondent did not plead ownership by way of counterclaim. It is elementary law which is settled in our jurisprudence that the court will grant only a relief which has been prayed for ..." See also Masaka Mussa v. Rogers Andrew Lumenyela & 2 Others, Civil Appeal No. 497 of 2021, (Unreported) (CAT) where it was underscored that: "It is settled position of the law that a relief not sought on the pleadings and which is not incidental to any specific prayer in the pleadings cannot be awarded." Appellant respondent by conceding to the oddities stated by the Court, and implored upon this Court the appeal be allowed for those reasons with no order as to costs. He promised to go to refile a proper land case. In response, the respondent had no any objection. It is for the reasons raised by the Court, which have been not resisted by any party to this appeal, I hold that the land case in the trial tribunal was incompetent for non-joinder of the seller of the piece of land. The proceeding and judgment of the trial tribunal are vitiated thus, nullity and I proceed to quash the same. I also set aside the decree of the trial tribunal. I add that even if the non-joinder would have not nullified the decision of the trial tribunal, its judgment and decree would not stand because the respondent did not plead ownership by way of counter-claim as a requirement enunciated in Melchiades John Mwenda (supra). The appeal is therefore partly allowed for the reasons I have explained above. I make no order as to costs as the grounds for my decision have been raised by this Court suo motu. It is so ordered. Dated at KIGOMA this 12th of February 2025 . J. NKWABI Page. 2 JUDGE OF THE HIGH COURT Page. 3

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/325425/source_file/aeb7791c818fe4a5/JUDGEMENT.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/alkadi-sungura-v-hussein-omary-mpambije-joinderofparties-tanzlii-2025--6a3ea5243b1caa912981a316

Prepared on 14 October 2026 · Esheria