

TANZANIA / JUDGMENT

CHARLES MADEJE YOHANA OTHERS
VS MALEK SADRUDIN SHARRIF JAMAL

COURT
TANZLII

DECIDED
5 February 2024

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IN THE HIGH COURT OF TANZANIA DODOMA SUB- REGISTRY AT DODOMA LAND APPEAL NO
5959 OF 2024 (Arising from District Land and Housing Tribunal for Dodoma in Land Application
No. 18 of 2022) BETWEEN CHARLES MADEJE YOHANA.....1ST
APPELLANT EMMANUEL DAMIAN CHISINDE.....2nd APPELLANT
MWANAIDI JUMANNE HASANI.....3rd APPELLANT JUMA CHISINDE
LENJIRA.....4th APPELLANT MICHAEL KALEBI
RESILWA.....5th APPELLANT LUCY CHALESI
MAZENGO.....6th APPELLANT MOHAMED
RAMADHANI.....7th APPELLANT DANFORD
MDENDEMI.....8th APPELLANT
SOKOINE.....9th APPELLANT ZULUPHATI
HUSENI.....10th APPELLANT OLIPER
JOSEPH.....11th APPELLANT ZULUPHATI
HUSENI.....12th APPELLANT ANA
HUSENI.....13th APPELLANT KHALFAN
SHABANI.....14th APPELLANT BELITA MASAKA
CHISUMBILI.....15th APPELLANT HUSSEIN ABDALLAH
SHABANI.....16th APPELLANT 1|Page ZUBERY HARUNA
ZUBERY.....17th APPELLANT VERSUS MALEK SADRUDIN SHARIF
JAMAL.....RESPONDENT

JUDGMENT

Date of last Order: 28/11/ 2024 Date of the Judgment: 13/12/ 2024 LONGOPA, J.: This is an appeal against the judgment and decree of the District Land and Housing Tribunal for Dodoma entered against the appellant over a land dispute for a surveyed plot of land located at Miyuji North within Dodoma City. It was alleged that the respondent was granted the Granted Right of Occupancy by the Capital Development Authority in plots of land designated as Plots No. 91 and 92 Miyuji West within the City of Dodoma with Certificate of Title No. 19633 since 1987 and the Certificate of Title was issued in 2011. Upon hearing both sides, the District Land and Housing Tribunal for Dodoma 5th February 2024 entered judgment and decree in favour of the respondent herein to

the extent that: first, the suit land located in Plots No 91 and 92 Miyuji East within Dodoma City in Dodoma Region is the 2|Page property of the respondent. Second, the appellants herein were trespassers onto the suit land. Third, the appellants were ordered to give a vacant possession. Fourth, the appellants' structures on the suit land were ordered to be demolished. Fifth, the appellants were condemned to pay costs of the matter. It is this judgement and decree that aggrieved the appellants hence took arms against the respondent by on 20th March 2024 preferring an appeal against the whole of the judgment on the following grounds, namely:

1. That, the trial Chairman erred in law and fact in deciding in favour of the respondent without considering the time in which the appellant have been in possession of above land;
2. That, the trial Chairman erred in law and fact for deciding in favour of the respondent without considering that the respondent's title deed was for agricultural and poultry purposes while the area has already been changed usage hence the appellants were properly identified and were in 3|Page due process of being issued with title deed by Dodoma City Council.
3. That, the trial Court erred in law and fact in ignoring strong evidence adduced by appellants thus arriving at erroneous decision.
4. That, the trial Chairman erred in law and fact for deciding that the respondent is lawful owner of the disputed land since 1986 while there was no evidence to prove the assertion.
5. That the trial Chairman failed to properly evaluate strong evidence of the appellants that the respondent obtained title when the appellants were in occupation.
6. That the trial Court erred in law and fact in determining the matter in favour of the respondent despite the fact that appellants had proved their case to the standard required by the law.
7. That the trial Tribunal's proceedings were marred with procedural irregularities hence vitiating the entire proceedings. 4|Page Thus, it was on strengths of all these grounds that appellants prayed for this court to allow the appeal with costs. On 28th November 2024, the parties appeared before this Court for viva voce hearing of the appeal whereby the appellants enjoyed the legal services of Mr. Ezekiel Amon, learned advocate and the respondent enjoyed the service of Mr. Deusi Nyabiri and Hamis Hamis, learned advocates. To argue the appeal, counsel for the appellants opted to submit on a single ground of irregularities and illegalities that according to him goes to the root of the case. This was the seventh ground of appeal. The counsel for appellant stated that the ground relates to the procedural irregularities that vitiates the whole of the proceedings of the trial Tribunal and the irregularities can be divided into three parts namely: certificate of mediation, representation before the District Land and Housing Tribunal through Powers of Attorney and irregularities on legal representation. On certificate of the mediation, it was the appellants' submission that all the application before the District Land and Housing Tribunal must be 5|Page preceded by mediation process before the Ward Tribunal and a

Certificate on Mediation thereof should be issued where there is failure to mediate the parties effectively. In the instant appeal at hand, the application contained the certificate MYBK/No/ 28/ 2022 whereas the Miyuji Ward Tribunal indicated that the parties were Malek Sadrudin Shariff Jamal and Charles Madeje Yohana. There were only seven respondents while other 20 respondents were not shown to have participated at the Ward Tribunal. According to the appellants, this differs with the application filed at the District Land and Housing Tribunal which has a total of 27 respondents. It was appellants' view that the case was filed prematurely against 20 persons/ respondents. This has contravened the provision of Section 13(4) of the Land Disputes Courts Act, Cap 216 that states that mediation is mandatory and 20 persons were never called at the Ward Tribunal. They were not represented. Also, the appellants' counsel argued that the certificate on mediation is violative of the law as the Ward Tribunal instead of mediating the parties did determine the matter as per Paragraph 4 of the certificate. The Ward Tribunal reached to the decision that though mediation failed but it found that the appellants herein were trespassers thus statement of condemnation and not mediation. It was stated that the Ward Tribunal had exceeded its mandates as per the requirements of the Land Disputes Courts Act, Cap 216 R.E. 2019 thus the whole application before the District Land and Housing Tribunal was a nullity as certificate on mediation was violative of the law. The second limb of the ground was related to the question of representation of the respondent herein one Maleki Sadrudin Sharif Jamal whereas the donor donated the powers to one Minaz Pyaral Kassam as the donee who represented the applicant both at the Ward Tribunal and District Land and Housing Tribunal for Dodoma and such powers of attorney was executed on 6th November 2019. The donor and donee are of the same address i.e. Post-Office Box 133, Dodoma. The donor and donee are using the same address. The appellants argued that Order III Rule 2(a) and (b) of the Civil Procedure Code, Cap 33 R.E. 2019 requires that the donor to be in different jurisdiction with the donee who is representing the donor. However, the available Powers of Attorney indicates that the donor and donee are all in Dodoma thus that violated the law relating to representation by powers of attorney. The appellants cited the principle in the case of Abdul Rahim Jamal Mohamed (Suing through his lawful attorney Fauzia Jamal Mohamed) versus Watumishi Housing Company Limited, Civil Appeal No 54/ 2021, CAT Dar es Salaam, at page 5 that illustrated the question of donor and donee being on different jurisdiction. It was the appellants' argument that the Powers of Attorney before the District Land and Housing Tribunal for Dodoma falls within the ambit of the principles in the cited case of the Court of Appeal. As the powers of attorney violated the legal requirement it is as if there was no representation of the respondent herein before the District Land and Housing Tribunal. The next ambit of irregularities relates to the legal representation of the respondent before the District Land and Housing Tribunal. From page 8 of the proceedings of the trial Tribunal, the appellants herein commenced having the legal representation of one Paulo Mwashitete learned advocate who stated representing 11 respondents then and that there was no Written Statement of Defence for the rest 16 respondents thus before the Tribunal there was a prayer to proceed with ex parte hearing against the 16 respondents. The list is found on pages 9 and 10 of the proceedings. It was

argued that there were 13 represented persons including some whose order of ex parte was granted and there was no lifting of ex parte hearing order against those respondents. There was neither filing of the WSD altogether. The ex parte order included 14th, 19th and 9th respondent who continued to be represented. Also, the 22nd respondent passed on as per proceedings on page 54 while proof of death is reflected in page 58. Pages 59-60 of the proceedings reflects abatement of the case against the 22nd respondent. It was argued that this person was appearing by being represented by the Counsel as reflected on pages 60 onwards to the end of the proceedings. It was conclusively argued that the application before the District Land and Housing Tribunal has serious legal issues that were irregular thus the whole proceedings were vitiated. On these irregularities made the proceedings are vitiated under the Land Disputes Courts Act thus this Court 9|Page is invited to quash the whole of the proceedings with costs and order that if any party is interested to enforce the rights should use proper legal steps and procedures to have the same determined. On the other hand, it was argued for the respondent that on certificate of mediation, the Ward Tribunal was availed with all the names of the respondents namely 27 names in total. The Ward Tribunal chose the First three names and included all other 27 respondents. Further, at page 2 of the Certificate the names of those who attended on the material date were recorded in the list. Other 20 were not in attendance and that failure of others to attend/appear before the Ward Tribunal does not create anything illegal in the circumstances. According to the respondent, it is on record that at page 2, one Elia Damian Chisinde stated to have stood and spoke on behalf of all other persons living in that area. He stated that if the respondent herein had any cause of action against them he was required to file the case at the District Land and Housing Tribunal. Further, at the same page 2 of the Certificate it is indicated that the mediation failed. The Ward Tribunal stated its own views but the end result was that the mediation failed. It was reiterated that under section 13 of 10 | P a g e the Land Disputes Courts Act, Cap 216 R.E. 2019, the Ward Tribunal is enjoined to hear the parties and peruse the documents to be able to mediate the parties. The statement was only indicating that the Tribunal observed that one party had proper documentation while the other party had nothing. On powers of attorney's representation, it was submitted that Order III Rule 2(b) relates to persons carrying out trade or business who are not resident within the jurisdiction of the Court. It does not apply to the circumstances of this case as the donor and donee are individual persons and they are not doing business or trade. The cited case was distinguishable as it does not relate to the circumstances of the matter at hand. It was added that at page 12 of the proceedings particularly Paragraph 2, the issue related to reasons for non-appearance were categorically stated that the donor was sick thus donated the Powers of Attorney to represent her. The circumstances of the matter made the counsel for the appellants not to objected the Powers of Attorney tendered in the District Land and Housing Tribunal for Dodoma. The Power of 11 | P a g e attorney was correctly tendered and handling the matter vide the power of attorney had no legal issues at all. It was further added that the Order cited is wide to allow powers of attorney in different circumstances and sickness was the reason that was advanced and clearly recorded in the proceedings of DLHT. The case of Irimaleva and Others vs Dima Nhorongo [1991] TLR 1 was cited to

illustrate that one of its principles was categorically indicating that sickness is a good ground for issuing a Power of Attorney. On legal representation on appellants, it was submitted that the mistake was on part of the appellants themselves. This cannot be imputed against the District Land and Housing Tribunal as it is the appellants' counsel who did not properly guide the Court. Moreover, on death of 22nd respondent before the District Land and Housing Tribunal, it was submitted that there was no illegality at all on DLHT. It is the counsel for the appellants who mentioned to represent 22nd respondent. Further, the Counsel for the appellants did not state before this Court any prejudices that appellants might have suffered. There is nothing going to the root of the case to warrant the nullification of the 12 | P a g e whole proceedings. We are of the view that that the ground of appeal lacks merits. Thus, this appeal should be dismissed with costs. In rejoinder, the counsel for appellants reiterated that at the Ward Tribunal for Miyuji there is nothing indicating representative suit nature for one person to speak on behalf of all others. It was further stated that it cannot be assumed that 20 respondents before the Ward Tribunal did appear. Regarding the Certificate of mediation, it was reiterated that there was no opinion of the Ward Tribunal but it granted the ownership of the land to the party to the case thus it wronged the law. The Ward Tribunal acted ultra vires contrary to Section 13(4) of the Land Disputes Courts Act, Cap 216 R.E. 2019. On Powers of Attorney, it is reiterated that Order III Rule 2(a) and

- (b) of the CPC does not allow representation for persons are in the same jurisdiction of the Court. There was no evidence of sickness. On legal representation, it is submitted that the primary and foremost duty to ensure that procedures are adhered to is placed on the Tribunal. The orders of the Tribunal must be respected and adhered thereto. Failure 13 | P a g e to do so violates the order of the Court. The inclusion of the deceased person/ party in the proceedings and the failure by the Tribunal to states about abatement in the judgment was against the law. This makes the whole of the proceedings to be vitiated. The Tribunal ought to have excluded that person from the moment the Tribunal accepted the certificate of death and marked the case abated against him. The question of not being prejudiced is far - fetched thus we pray that this appeal be allowed with costs. Having heard the submissions by the parties this court is enjoined to consider the available record in light of addressing a single ground of appeal based on irregularities and illegalities. It should be noted at the outset irregularities may be of two kinds, the irregularities that are do not go to the root of the case which may be ignored and those which are fundamental procedural irregularities causing miscarriage of justice. This was stated in the case of Ngerengere Estate Co. Ltd vs Edna William Sitta (Civil Appeal No. 209 of 2016) [2018] TZCA 271 (7 September 2018) (TANZLII), at page 10-11, the Court held that: 14 | P a g e However, on a reflection regarding the present case and consequence of the missing document, we have found that the same is inconsequential to the core dispute between the parties. We have thus found that the absence of the missing document would not occasion injustice to either party. This position was taken by this court in the case of MANENO MENGI LIMITED & 3 OTHERS v. FARIDA SAID NYAMCHUMBE & ANOTHER [2004] J T.L.R 395 cited by Mr. Vedasto where it was said

thus: "...irregularities or non-compliance which do not go to the root or substance of the matter can be overlooked provided there is substantial compliance with the rule read as a whole and no prejudice is occasioned." In *Sikuzan Saidi Magambo & Another vs Mohamed Roble* (Civil Appeal No. 197 of 2018) [2019] TZCA 322 (1 October 2019) (TANZLII), at page 11, the Court noted that: On the strength of our previous decisions cited above, we are satisfied that the pointed omissions and irregularities 15 | P a g e amounted to fundamental procedural errors that have occasioned a miscarriage of justice to the parties and had vitiated the proceedings and entire trial before the Tribunal, as well as those of the first appellate court. In context of hearing at the DLHT irregularities that might vitiate the whole proceedings are those relating to none participation of the assessors, failure to record the assessors' opinion, or failure to give reasons for departing from the assessors' opinion, failure to sign the proceedings after recording the evidence of the witnesses, failure to observe the principles of natural justice to mention but few. These are normally mandatory provisions of the law that impose duty on the trial Tribunal to adhere to those procedural requirements. The first limb of irregularities is that of Power of Attorney on the representation of the respondent. The basis of the argument was that both donor and donee of the Special Powers of Attorney have the same Post Address of P.O. Box 133, Dodoma. It was submission that by virtue of Order III Rule 2(a) and (b) of the Civil Procedure Code, Cap 33 R.E. 2019 and the principle in the case *Abdul Rahim Jamal Mohamed, the Powers* 16 | P a g e of Attorney before both the Ward Tribunal for Miyuji and District Land and Housing Tribunal for Dodoma was improper thus vitiated the whole proceedings. On the other hand, the respondent's counsel argued that: one, by virtue of Order III Rule 2(a) of the CPC is wide enough to accommodate the circumstances prevailing in the instant appeal. Two, that at page 12 of the Proceedings before the District Land and Housing Tribunal for Dodoma, the is lucid reason for the grant of Special Powers of Attorney was sickness of the respondent thus unable to appear before the Tribunal. Three, that by virtue of the principle in *Irimaleva and Others vs Dima Nhorongo*

[1991] TLR 1, sickness is a good cause for one to donate his powers to a lawful attorney to act on his behalf. To address this limb, it is stated at the outset that under the Civil Procedure Code, the representation though powers of attorney is guided by Order III Rule 2(a) and (b) of the Code. Such representation is restrictive in nature. Among the restriction posed include that for powers of attorney to be valid one of the parties to such powers of attorney must be outside the jurisdiction of the Court especially the donor of the powers. In the case 17 | P a g e of *Abdul Rahim Jamal Mohamed vs Watumishi Housing Company Limited* (Civil Appeal No. 54 of 2021) [2024] TZCA 155 (5 March 2024), at page 6, the Court of Appeal stated that: With respect, we agree with the learned counsel as we are satisfied that notwithstanding the provisions of Order III rule 2(a) of the Civil Procedure Code (the CPC) which allows court representation through an attorney, that provision must be limited to persons outside the jurisdiction of the court. As alluded to earlier, both the donor and donee of the power of attorney were within the same jurisdiction of the court. Accordingly, the prosecution of the suit by Fauzia Jamal Mohamed as an attorney of the appellant was

highly irregular. Any of her actions in the trial court was invalid. I entirely subscribe to this legal position set out by the Court of Appeal with respect of the powers of attorney in civil suits under the Civil Procedure Code. 18 | P a g e However, in settled view of this Court the principle in this decision does not apply to the instant case as the procedure obtaining in the Civil Procedure Code, Cap 33 R.E. 2019 upon which the decision is based apply to the District Land and Housing Tribunal in exceptional circumstances where there is lacuna. Section 51(2) of the Land Disputes Courts Act, Cap 16 R.E. 2019 provides for applicability of the Civil Procedure Code in the District Land and Housing Tribunals. It states categorically that:

- (2) The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code. It is lucid that two important aspects are articulated in this provision. First, the procedural law for the District Land and Housing Tribunal is obtained both in the Land Disputes Courts Act and its regulations. Second, it is only on circumstances of inadequacy of the procedural aspects when the provisions of the Civil Procedural Code apply. 19 | P a g e In the Land Disputes Courts Act, the law provides for representation in the District Land and Housing Tribunal. In particular, section 30 allows representation by allowing parties to appear in person or by an advocate or by any relative or any other member of the household or authorised officer of a body corporate. The scope of persons who may appear to represent interests of the parties are so wide compared to what is contained in the Civil Procedure Code, Cap 33 R.E. 2019. The Act states as follows:

30. Proceeding of the District Land and Housing Tribunal shall be held in public and a party to the proceedings may appear in person or by an advocate or any relative or any member of the household or authorized officer of a body corporate. In the case of the case of Julius Petro versus Cosmas Raphael

[1983] TLR 349, the Court held that: Under s. 29(2) of MCA Cap. 537 a party can only be represented by 'any relative or any member of his or her household'. As to what is 'relative' it is not defined but I would settle for the definition given by the Concise 20 | P a g e Oxford Dictionary 5th Ed. (1975) that a relative is a kinsman or kinswoman to whom one is related by blood or marriage. At least there should be closeness of blood relationship. On the principle of ejusdem generis rule of interpretation the word 'relative' should be restricted to near relatives not distant relatives, so that we do not venture very far from related members of the household contained on the second part of that phrase. It is clear that generally in civil proceedings which are not solely governed by the Civil Procedure Code, Cap 33 R.E. 2019 permits the appearance in the proceedings by persons other than the party in person or advocate. This is so evident in land matters before the District Land and Housing Tribunal; in the Commission for Mediation and Arbitration and the High Court in labour matters as well as in primary courts. These are by virtue of section 30 of the Land Disputes Courts Act, Cap 216 R.E. 2019; section 56 of the Labour Institutions Act, Cap 300 R.E. 2019 and Section 86(6) (c) of the Employment and Labour Relations Act, Cap 366 R.E.

2019, Rule 23(1) of the he Labour Institutions (Mediation and Arbitration) Rules, 21 | P a g e 2007 GN No 64 of 2007 and Rule 7(1) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007; and section 33(2) of the Magistrates Courts Act, Cap 11 R.E. 2019. An illustrative case on this aspect is that of Ndaro Bwire Songora vs Mwinuko Secondary School (Civil Appeal 371 of 2019)

[2022] TZCA 825 (8 December 2022) (TANZLII), at pages 8-9, the Court reiterated that: The above provision provides for a list of people who can represent a party before the Labour Court. As it can be observed, apart from an official of a registered trade union and an advocate, a personal representative of a party's own choice is also mentioned to be among those who may appear before the court. In our view, since the legislature mentioned in the list a personal representative separately from an advocate, it cannot be said that the intention was to categorise personal representative of a party in the group of advocates. It is trite that when the 22 | P a g e language of a statute is plain, the court need not go out of its way and interpolate; as the courts must presume that, the legislature says in a statute what it means and means what it says as it was held in CONNECTICUT NAT'L BANK V. GERMAIN, 112 S. Ct. 1146, 1149 (1992) quoted in a number of Court's decision including, Republic v. Mwesige Godfrey and Another, Criminal Appeal, No. 355 of 2014 and Geita Gold Mining Limited v. Commissioner General Tanzania Revenue Authority, Civil Appeal No. 132 of 2017 (both unreported). In the matter at hand, the language of the statute, in particular section 56 (b) of LIA as quoted above is very clear that a personal representative of a party's own choice is also allowed in the proceedings before the Labour Court. Therefore, we find that in the circumstances of this matter, the duty of interpretation did not arise and thus it was, with respect, wrong for the learned Judge to make reference to the provisions of 23 | P a g e section 39 of the Advocates Act, Cap. 341 R.E. 2002 to restrict representation in labour matters to qualified advocates and members of trade unions. This we say because, an advocate was already in the list together with personal representative. Had it been that a non- practising advocate or lawyer is not required to represent a party, the law ought to have expressly stated so. As specific law governing dispute of this nature i.e. land disputes before the District Land and Housing Tribunal is categorically clear and lucid that a relative or member of the household can appear on behalf of the party to the matter before the Tribunal it cannot be said the principle regarding powers of attorney under Order III Rule 1 and 2 (a) and (b) of the CPC which is restrictive in nature applies to this specific law that provides for a wide representation. It is settled view of this Court that the principle in the case Abdul Rahim Jamal Mohamed vs Watumishi Housing Company Limited (supra) is distinguishable and inapplicable to the proceedings before the District Land and Housing Tribunal. In the circumstances, therefore, any 24 | P a g e lamentation on the powers of attorney of the respondent's representative is far-fetched, and destitute of merits thus it is overruled. On certificate of mediation, it was the submission of the counsel for the appellant that submitted on two main aspects: one, mediation involved only few persons while the application before the District Land and Housing Tribunal for Dodoma there were about 27 respondents. Two,

that the certificate was defective for determining the application before it instead of mediating it. The respondent was of the view that nothing in the mediation certificate was violative of the law. It was the respondent's view that the persons appearing in the certificate are the ones who attended mediation but all the persons trespassed to that land were informed of the mediation. The law on mediation before the Ward Tribunal cater for two main aspects. First, the Ward Tribunal must the matter must be subjected to mediation before the Ward Tribunal. Second, the in case of failure to mediate the parties, the Ward Tribunal should issue a certificate on failed mediation. Third, on expiry of 30 days of mediation without the matter being resolved, the party to the proceedings may institute a case against 25 | P a g e the other party without certificate that mediation failed. In essence, mediation before a Ward Tribunal is expected to last for 30 days period. On the procedure of compulsory nature of mediation, the Court illustratively in the case of *Mariam Haji Ali vs Ally Mohamed Urio & Another* (Land Appeal Case No. 28509 of 2023) [2024] TZHCLandD 395 (20 June 2024) (TANZLII), at pages 8-9, the High Court (Hon. Gwae, J.) stated that: From the context of the above provision of the law, the DLHT is required at the institution of the suit to satisfy itself that, disputants have passed through mediation process at the Ward Tribunal as plainly required by the law. This is the vital requirement before an institution of a land dispute before DLHT, which the parties are required to comply with. To prove that, the applicant/plaintiff is required to submit at the Tribunal the certificate from the Ward Tribunal certifying that it has failed to mediate the parties. However, the proviso provides for an exception to the general rule that, if 30 days' period lapses from the institution of the dispute before the ward tribunal, any 26 | P a g e aggrieved party may institute the dispute before DLHT without the certificate from the Ward Tribunal. Upon perusal of the Certificate attached to the application, it is on record the respondent herein did tender and the trial Tribunal admitted the Certificate from the Ward Tribunal for Miyuji as an Exhibit 6. The title of that Exhibit P. 6 indicates that parties are Malek Sadrudin Shariff Jamal versus Charles Madeje, Emmanuel Damian Chisinde, Caroline Gabriel Mongi and all others. It reveals further that on 14th January 2022, the only persons who appeared were seven persons who were listed on Exhibit P.6. Further, the contents of the Certificate reveal that one Elia Damian Chisinde stated on behalf of all the residents living in the disputed plots of land that they had no dispute with the respondent and if the respondent had any claim of rights against should institute the case against them at appropriate adjudication body. In addition, the Ward Tribunal noted that all the appellants refused to mediate thus urged the respondent herein to institute proceedings at the District Land and Housing Tribunal. 27 | P a g e Furthermore, the Ward Tribunal for Miyuji stated that the mediation failed and noted that the Ward Tribunal noted the disputed land appear to belong to the respondent herein as he has all documentation on ownership of the disputed land. Having observed all those aspects, it is lucid that mediation was conducted and it failed. The issuance of the certificate by the Ward Tribunal entails that mediation failed. I should hasten to state that lamentation related to mediation is destitute of merits. I state so for the following reasons. First, it is evident that the respondent instituted a complaint against all the persons who allegedly

invaded that land. This was demonstrated by statement of one Elia Damian Chisinde who stated to have spoken on behalf of all residents in that disputed land. This is also corroborated by the titling of the parties in the Certificate whereby it is indicated three parties and all others. That being the case, I am satisfied that none of the persons allegedly trespassed the land was not joined in the Ward Tribunal proceedings for mediation. Second, there is no procedure for the modalities of recording the parties to the mediation as well no particular/ specific format of the 28 | P a g e Certificate of Mediation. Both sections 13 and 14 of the Land Disputes Courts Act, Cap 216 R.E. 2019 regarding specific contents of the certificate including inclusion of names of all the parties when one side is having many persons. In *Karori Chogoro vs Waitihache Merengo* (Civil Appeal No. 164 of 2018) [2022] TZCA 83 (1 March 2022) (TANZLII), at page 12, the Court noted that: We think and firmly believe that the sanctity of court or Tribunal orders demands that those orders must be complied with. In the instant situation, it could simply be going to the Ward Tribunal for mediation, which would still be compliance. Once that has failed, then with the certificate issued by the Ward Tribunal, parties can still file their case in the Tribunal, seized (ceased-sic!) with jurisdiction. The third aspect relates to irregularities on the legal representation and appearance of the person whose court determined the abatement of the proceedings. Two main complaints are in this limb. One, that was ex 29 | P a g e parte hearing order that appeared to have been violated. Two, continuing mentioning of the 22nd respondent while proceedings terminated against him. A thorough perusal of the available records, we have noted persons represented by the learned advocate who were represented included Charles Madeje Yohana, Caroline Gabriel Mongi, Mohamed Ramadhan, Juma Chisinde Lenjira, Khalfan Shaban, Oliver Joseph, Lucia Charles, Zubery Haruna Zuberi, Danford R. Mndendemi, Mwanaidi Hassan, Michael Kalebi Resilwa, Frank Mwilawi and Wahabi Adam Juma. The list of those represented is found in Joint Written Statement of Defence filed on 1st April 2022 for all the named represented save for one and that filed on 10th June 2022 which related to only one Michael Kalebi Resilwa. I have considered the laments that it was wrong for the trial Tribunal to allow the counsel for the respondents before the Tribunal for the persons against whom the ex parte hearing order was passed, in my humble view there was nothing wrong with allowing the counsel to appear for those persons. There was nothing to impair the proceedings of the trial 30 | P a g e Tribunal by mere fact that the counsel did appear even for those whose case was heard ex parte against them. The right to legal representation is considered to be constitutional right envisioned in Article 13(6) of the Constitution of United Republic of Tanzania within the ambits of the fair hearing. In the case of *Rafii Said Mpendu vs Adam Ally Mkalapema & Others* (Civil Application 603 of

2021) [2022] TZCA 735 (21 November 2022) (TANZLII), at page 7, the Court stated that: Having said so, it is our settled view that right to legal representation is the constitutional right but it has to be exercised in a rightful way. The only limitation that would have affected the proceedings if the advocate was not qualified. However, there is no such complaint. The appearance of the advocate for the respondents in the Tribunal even for those whose case

against was heard ex parte did not affect the order. The reason is simple. One, none of them appeared to defend the case. Two, the learned advocate never applied for setting aside ex parte order against those persons. 31 | P a g e It is settled view of the Court that there was nothing affecting the proceedings as the order of the trial Tribunal remained intact. There is nowhere in the proceedings where the advocate in question did anything regarding the ex parte order. That is the reason the Judgment of the District Land and Housing Tribunal for Dodoma stated categorically that on its first page that the hearing proceeded ex parte against the 2nd, 7th, 10th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 20th, 21st, 23rd, 24th, 25th, 26th, and 27th whom opted not to appear. It is lucid that this observation of the trial Tribunal which stated that as those persons did not appear the hearing would proceed ex parte against all of them. This limb of laments has nothing of merit nature. Nothing has affected the proceedings. The second limb also does not have merits as it relates to the order relating to 22nd respondent before the trial Tribunal against whom the proceedings were abated as a result of death. The Tribunal ordered at page 60 of the proceedings that proceedings against that person was terminated/ abated due to death. The continuing representation/statement by the counsel for respondent to represent among others the 22nd 32 | P a g e respondent has nothing to do with the irregularities of the court proceedings as the Tribunal only recorded 22nd respondent only to reflect statement of the counsel for the respondents before the Tribunal. It had nothing to deal with the evidence of the witnesses. It is unfortunate that the counsel for appellants did not inform this Court on any legal provision or principle of law that was violated in course of the counsel for respondents in the Tribunal mentioning to appear for the respondents who engaged him. Neither the appellants informed the court if any of their rights were impaired in the circumstances. Indeed, if there were any shortcomings with regard to this aspect the same does not go to root of case. Entertaining such aspects to defeat the whole decision would be failure by this to uphold substantive justice and being too tied with technicalities which do not uphold the enshrined constitutional principle that courts should not be tied with technicalities as per Article 107A (2) (e) of the Constitution of the United Republic of Tanzania and overriding objective principle under section 3A and 3B of the Civil Procedure Code, Cap 33 R.E. 2022. 33 | P a g e In the upshot, this appeal lacks merits as all the limbs of the irregularities and illegalities are devoid of merits. This appeal is dismissed in its entirety with costs. it is so ordered. DATED at DODOMA this 13th day of December 2024 E.E. LONGOPA JUDGE 13/12/2024. 34 | P a g e

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