

TANZANIA / JUDGMENT

joseph ambolike sanga 3 others vs clement balina bomani 34 others 2023 tzhclandd 17261 18 december 2023

COURT
TANZLIIDECIDED
18 December 2023

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND REVISION
NO.22 OF 2023 ^Originating from the Judgment and Drawn Order in the Land Dispute No 101 of
2016 from the District Land and Housing Tribunal of Kibaha before Hon S.L Mbuga - Chairperson
dated 30th March 2023) JOSEPH AMBOLIKE SANGA..... 1st APPLICANT
SAMSON BERNARD BUNGA..... 2nd APPLICANT BERNARD M.
MBAPILA..... 3rd APPLICANT KARIM K.
MCHIMBI..... 4th APPLICANT VERSUS 1.CLEMENT BALINA
BOMANI..... 1st RESPONDENT 2.JUMA
RHOBIL..... 2nd RESPONDENT

3. YAH AYA ASAKWE..... 3rd RESPONDENT 4.RAMADHANI
PANGA..... 4th RESPONDENT 5.PAUL
DANIEL..... 5th RESPONDENT
6.JACKPBOJOACKIMU..... 6th RESPONDENT 7.PETER
KAPENJA..... 7th RESPONDENT

8. DOTTO MUSANGA..... 8th respondent 9.JUMA
HUSSEIN..... 9th respondent 10.JORAMU
KAMBONA..... 10th respondent
11.WOMBOZIPASHUA..... 11th respondent

12. JOHN AKARO..... 12th respondent

13. JOICE ERNESTI..... 13th respondent

14. CHED TUNGWANA..... 14th respondent

15. SITIVINI MWAKATOBÉ..... 15TM RESPONDENT

16. HUSSENI KAMBONA..... 16TM RESPONDENT

17. HAMZA KIPETITE..... 17TM RESPONDENT

18. JOSEPH MURULE..... .18th RESPONDENT. i 19.HAMADI MOHAMED 19th RESPONDENT
20. JUMA NYUUBA 20th RESPONDENT
21. SONI YOSAMU 21st RESPONDENT
22. BAKARI MANGI 22nd RESPONDENT 23.CHALE NYISONGA 23rd RESPONDENT 24.MIRAJI ATHUMANI 24th RESPONDENT 25.MAHEMBA CHACHA 25th RESPONDENT 26.BESTI ERITONI 26th RESPONDENT 27.JAMES MARO 27th RESPONDENT
28. JAMES MVIRE 28th RESPONDENT 29.SELEMANI SAID 29th RESPONDENT 30 . FAIZA KITONKA 30th RESPONDENT 31.MWANAHAMISI SHABANI 31st RESPONDENT 32.NEEMAMSUNGI 32nd RESPONDENT 33.HEPPY MWAKAROBO 33rd RESPONDENT 34.MZEE MORWA 34th RESPONDENT 35.BUMI BUSESE 35th RESPONDENT 05/12/2023 & 18/12/2023

RULING

A. MSAFIRI, J This is a ruling of this Application where the applicants are seeking for the order of this Court to call for records, proceedings, Judgement and Decree on the Land Dispute No. 101 of 2016 from Kibaha District Land and Housing Tribunal at Kibaha,(herein as the trial Tribunal) dated 30th March 2023 by Hon. S.L Mbuga, Chairperson. The applicants prays further 2 that after calling for the said records, this Court revise and quash the Judgment and proceedings of the trial Tribunal. The brief background of the dispute is that the applicants claims to be the lawful owners of the disputed land located at Mapinga Area, Zinga Ward, Bagamoyo, Pwani, the land which they say it was allocated to them by the Village Government Authority on diverse dates. That, they have been in occupation of the disputed land for more than 18 years, and have developed it. That, surprisingly, the applicants became aware of the existing of Judgement and Decree on Land Dispute No. 101 of 2016, the decision of the District Land and Housing Tribunal of Kibaha, which involved the 1st respondent against the 2nd -35th respondents, in which the applicants were not the party to the case. That, the above said judgement is over the disputed land which is owned lawfully by the applicants. Hence, the applicants instituted the present Application seeking for revision of the said judgement. The Application is made under Section 43 (1) (b) & 43 (2) of the Land Disputes Courts Act, [Cap 216 R.E. 2019], by way of chamber summons supported by joint affidavit of the applicants who are; Joseph Ambolike Sanga, Samson Bernard Bunga, Bernard M. Mbapila, and Karim K. Mchimbi. The Application was contested by a counter affidavit which 3 was deponed by Stevens Kosi Madulu, learned advocate for the 1st respondent. The 2nd -35th respondents did not file the counter affidavits and through their advocate Mr Paulo Mtui, they informed the Court that they don't intend to contest the Application. The applicants were being represented by Mr Jacob Fabian, learned advocate while the 1st respondent was represented by Mr S.K.Madulu, learned advocate and Mr Yusuph Mathias, learned advocate. Before setting hearing date, the counsels for the 1st respondent prayed to file a notice of preliminary objection which was granted by the Court. The preliminary objection was on the time limitation of the matter whereby after hearing of both parties, this Court overruled all

points of objection with costs on 18/10/2023 and ordered the Application to proceed on merit. The Application was heard on merit by way of written submissions whereby the submissions by the applicants were drawn and filed by Mr. Vedastus S. Majura, learned advocate while the reply submissions by the 1st respondent was drawn and filed by Mr. Yusuph Mathias, learned advocate. In support of the Application, Mr Majura for the 1st respondent submitted that this Application was instituted by the applicants after 4 becoming aware of the of the existence of the judgment on the Land Dispute No. 101 of 2016 between the 1st respondent and the 2nd -35th respondents herein before the trial Tribunal. That the dispute was over the land located at Changwahela area within Mapinga Ward, Bagamoyo District, Pwani Region which is lawfully owned by the applicants herein. That the applicants were not parties to the Land Dispute No. 101 of 2016 whereby the 1st respondent was declared to be the owner of the disputed land. Mr. Majura averred that the applicants are actually owners of the said disputed land having lawfully acquired the same by being allocated by the village authority and developed the disputed land by proceeding with survey and acquiring the title deed each on their pieces of land within the disputed land. Mr. Majura contended that the applicants being the lawful owners of the disputed land, they were never summoned to appear before the trial Tribunal to defend themselves in Land Dispute No. 101 of 2016 and they were not accorded the right to be heard to prove their ownership of the disputed land hence they pray for the proceedings, judgment and decree to be revised, quashed and set aside. I 5 To bolster his points, the counsel for the applicants referred the case of Nixon John Kiwelu vs. Bernard Maarifa and another, Misc. Land Case Application No. 214/2020, HC Land Division, DSM at page 7(Unreported). In reply, Mr Mathias, counsel for the 1st respondent submitted that the applicants claim to have an interest in the disputed land which according to the records of the trial Tribunal, the 1st respondent was declared the rightful owner holding certificate of occupancy No. 52696 in Land Farm No. 2064 measured about 100 acres. That the said Certificate was granted to the 1st respondent in 1st April 2002. Mr Mathias argued further that, according to the contents of the applicants'joint affidavit, it shows that the 1st applicant bought a piece of land from Dotto Masaga although there are neither year, size or proof of that fact. That it shows that the 2nd applicant was allocated the land by the village authority in the year 2006, while the 3rd and 4th applicants were all allocated pieces of land by the village local authority in the 1997. He added that although the attached certificates of titles are in the names of the 1st and 2nd applicants, paragraph 6 of the affidavit suggest that they were granted with Certificates of Titles in the year 2022. He said further that, the 1st and 2nd applicants were granted their Titles in 2022 6 while the 1st respondent was granted his Certificate of Title in 2002, well twenty years before the 1st and 2nd applicants. He argued that the 3rd and 4th applicants have no Titles to hold to hence they stand to lose against the 1st respondent. To cement his point, the counsel cited the case of Amina Maulid Ambali and 2 others vs. Ramadhani Juma, Civil Appeal No. 35 of 2019, CAT at Mwanza (Unreported). He insisted that basing on the records of the trial Tribunal, he is of the view that the applicants' claims are unfounded, baseless and meant to frustrate and delay the 1st respondent's right to develop the disputed land. He prayed for the dismissal of the Application with costs. On rejoinder, Mr. Majura reiterated his submission in chief. He added that since the Applicant have demonstrated that they have sufficient interest on the disputed land and that they have demonstrated how they acquire the disputed land. At the

same time the 1st respondent claim to own the disputed land, hence in order for the parties to prove how they have acquired the disputed land lawfully and having better title over the same, it need the parties to demonstrate how they obtained the same and this can only be done if the fresh suit will be filed by the litigants depending on the decision of the court in the present Application. 7 Mr. Majura concluded that the applicants were not summoned on the hearing of Land Dispute No. 101 of 2016. He prayed for the Application to be allowed. The law requires this Court to exercise its revisional jurisdiction in a case where it appears that there has been an error material to the merits of the case involving injustice. This is provided under Section 43 (1) (b) of the Land Disputes Court Act, Cap 216 R.E 2019. The applicants are praying for this Court to call and inspect the records and decision of the District Land and Housing Tribunal for Kibaha in Land Application No. 101 of 2016, and after revision this Court be pleased to quash the proceedings and set aside the ruling and drawn order of the trial Tribunal. The pertinent question here is whether there was any error material to the merit of the case i.e. Land Application No. 101 of 2016 involving injustice. The main claim from the applicants is reflected in the applicants' joint affidavit that they are the lawful owners of the disputed land which the trial Tribunal in Land Dispute No. 101 of 2016, declared it to be lawfully owned by the 1st respondent. That the hearing of the said matter was heard without the knowledge of the applicants hence they were denied of the rights and chance to defend their interests in the disputed 8 land. Another important question is whether the applicants have successfully established their interests on the disputed land. During the hearing at the trial Tribunal, according to the records, the Land Dispute No. 101 of 2016 was instituted by the 34 applicants (currently the 2nd -35th respondents) against the 1st respondent. They were claiming to be declared the lawful owners of suit premises located at Changwahela area, Mapinga Ward, Bagamoyo, Coast Region. The 1st respondent also claimed to be the owner of the same area and produced a Certificate of Occupancy showing that he is the lawful owner of Farm No. 2064 located at Changwahela, Bagamoyo District. After hearing, the trial Tribunal declared that the 1st respondent is the lawful owner of the disputed area which was named to be located at Changwahela, Mapinga, Bagamoyo District, Coast Region. It is true that the applicants were not parties to the hearing but this was not due to anyone's fault as the proceedings shows that neither parties of the dispute was aware of the claimed ownership of the applicants over the disputed land. The Land Dispute No. 101 of 2016 was instituted for the first time in 01st September 2016. On 01st October, 2021, the trial Tribunal delivered its judgment on which the 1st respondent was declared the owner of the disputed land. The then 34 applicants were aggrieved by that decision 9 and lodged an appeal to this Court whereby the appeal was allowed on ground of legal procedure error that the trial Chairperson failed to conduct summing up to the assessors and the matter was referred back to the trial Tribunal. After summing up to the assessors, the trial Tribunal composed another judgment which was also in favour of the 1st respondent and it was delivered in 30th March 2023. At all this time, the applicants who claimed to be the lawful owners of the disputed land alleged to be unaware of what was happening on the said land. The applicants claims to be in occupation of the disputed land for eighteen years (18) conducting their economic activities but strangely they also claims to be unaware of the dispute over ownership of that land and they have "recently" became aware of the existing judgment over the disputed land. In their affidavit, the

applicant have not shown when and how they became aware of the impugned judgment of the trial Tribunal. These facts has lead me to agree with the counsel for the 1st respondent's submission that the applicants' claimed land is not the same as disputed land described as Farm No 2064, with Certificate of Title No. 52696 located at Changwahela, Bagamoyo District in Coast Region. The reason for my agreeing with that submission is that in their joint affidavit, the applicants claims that they are the lawful owners of the disputed land located at Mapinga area, Zinga Ward, Bagamoyo District, w I Ig - io The applicants have attached the documents to prove their ownership. The 2nd applicant Samson Bernard Bunga rely on a letter from Mapinga Village Government dated 24/10/2006 which shows that he was allocated a piece of land. The letter does not describe the location of the said piece of land. The 3rd applicant Bernard Mbapila and 4th applicant Karim Mchimbi also each attached letters which show that they were allocated pieces of land at Changwahela Hamlet at different dates. The 1st applicant Joseph Ambokile Sanga has attached a photocopy of the Certificate of Title which shows that he owns a piece of land described as Plot No. 130 Block LL situated at Mapinga in Bagamoyo Urban. Also it is shown that he also owns land described as Plot No. 131 & 132 Block LL at Mapinga, Bagamoyo Urban area, and Plots No 135 & 136 Block LL situated at Mapinga, Bagamoyo Urban. The 3rd applicant has also attached a photocopy of a Certificate of Title which shows that he is the owner of land described as Plot No. 161 Block LL situated at Mapinga Bagamoyo Urban. Having gone through all the above ownership documents, I am satisfied that they don't relate with the disputed land measured at 110 acres found at Changwahela area, Mapinga Ward, Bagamoyo District, Pwani Region which was a subject matter in Land Dispute No. 101/2016. From this, I find that the applicants have failed to establish that they have li interest on the subject matter in Land Dispute No. 101/2016 and that they were entitled to be heard on the same. I find that having revised the proceedings, findings and decision of the trial Tribunal in Land Dispute No. 101/2016, there is no error material on the said proceedings, findings and decision as the applicants did not manage to establish interest on the subject matter which is the disputed land such that to deserve the right to be heard on the matter. In the upshot and for the explained reasons, this Application has no merit and it is hereby dismissed with costs. It is so ordered. MSAFIRI JUDGE 18/12/2023 12

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/joseph-ambolike-sanga-v-clement-balina-bomani-revisionjurisdiction-tanzlii-2023

Prepared on 14 October 2026 · Esheria