

TANZANIA / JUDGMENT

# mjihadhari bakari another vs lazaro methusela magese 2023 tzhclandd 17044 18 october 2023

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18 October 2023

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND APPEAL NO. 272 OF 2023 fOriginating from the decision of the District Land and Housing Tribunal for Temeke, at Temeke. Application No. 158 of 2018, delivered on 29h May, 2023 before P.I. Chinyele, Chairperson') MJIHADHARI BAKARI ..... 1st APPELLANT MOHAMED MPAMBA..... 2nd APPELLANT VERSUS LAZARO METHUSELA MAGESE..... RESPONDENT 05/10/2023 & 18/10/2023

## RULING

A. MSAFIRI, J In this appeal the appellants were aggrieved by the decision of the District Land and Housing Tribunal for Temeke at Temeke, (herein as DLHT) in Land Application No. 158 of 2018 before Hon. P.I. Chinyele, Chairperson, whereby the decision of the DLHT was in favour of the respondent, hence, this appeal. L, I j ,, i After being served with the Memorandum of Appeal, the respondent also filed Reply to the Memorandum of Appeal and along with it he raised a preliminary objection to the effect that;

1. That this appeal is incurably defective or bad in law for failure to name all parties who appeared in the former or original proceedings. On 05.10.2023 the matter was scheduled for hearing of the preliminary objection whereas, it was heard orally. On the hearing the respondent was represented by Mr Lutufyo Mvumbagu, learned Advocate while the appellants were represented by Mr Anaseli Lesika, learned Advocate. Mr Lutufyo submitted that it is a mandatory requirement to name in the appeal, all the parties that appeared in the previous proceedings who are being appealed against, failure of which the appeal is rendered incurably defective. He further stated that the rationale behind is that the decision in the appeal will eventually affect all the parties in the original proceedings so it is necessary that all the parties who were in the original proceedings should also be joined in the appeal. /Ld I 2 He argued further that, in the previous proceedings i.e. Application No 158 of 2018 before DLHT, the parties were four while in the current appeal, the appellant have joined only one respondent in the appeal. To buttress his points, he cited the case of Aloyce Chacha Keng'anya vs John Onesmo Wilson, Land Appeal No 122 of 2021, HC Land

Division (Unreported) where the Court insisted on the necessity of joining all the parties from the original proceedings. He urged the Court to strike out the appeal with costs as it was incompetent before the Court. Mr Lesika learned Advocate in response contended that there was an error made by the trial Chairperson in Land Application No. 158 of 2018 which is the origin of this appeal in composing the impugned Judgment and decree. That the trial Chairperson mistakenly included the parties that were already expunged in the previous proceedings. He named the expunged parties to be one Subira Abdallah who was the 3rd respondent in the original proceedings but passed away hence she was removed from the Application. But that surprisingly Subira Abdallah appeared in the Judgment of the DLHT despite the fact that the same was no longer a party in the application. He named the other party to be Rukulatwa Kiguta who was the 4th respondent but the matter was heard ex-parte against 3 him hence his name could not have had appeared in the impugned

### **judgment.**

Mr Lesika submitted further that even if this Court will find that the said parties were to be joined, then the remedy is not to strike out the entire appeal or dismissal but that the court can order for the amendment of the appeal. To bolster the above point Mr. Lesika invited this Court to invoke Order IX Rule 9 and Order 1 Rule 10(2) of the Civil Procedure Code, Cap 33 [R.E. 2019] He added that the appellant is appealing only against the current respondent, so the appeal should be allowed to proceed on merit so as to determine the rights of the parties. Mr Lesika prayed that in the alternative, the Court be pleased to allow the amendment or struck out this appeal with leave to refile. In rejoinder, Mr Mvumbagu contended that the proper procedure for the appellant to adopt was to apply for rectification of the impugned Judgment before the same trial Tribunal and not this Court if at all the Judgment contained the said errors. He added that the remedy for the incompetent appeal is to strike out the same and no amendment is allowed. He reiterated his prayers. All- After a careful consideration of the rival submission of the parties, it appears that the previous proceedings were between Lazaro Methusela Magese vs Mjihadhari Bakari (1st respondent), Mohamed Mpamba (2nd respondent), Subira Abdallah(3rd respondent) and Rukulatwa Kiiguta( 3rd respondent) as per the attached Judgment of the DLHT in Land Application No. 158 of 2018. However, the appeal before this Court is between Mjihadhari Bakari & Mohamed Mpamba vs Lazaro Methusela Magese. The rest of the parties as they were in the original proceedings were not joined. In my view, this appears to be a new different matter from the one which is appealed against. I have considered the argument from the counsel of the appellants Mr Lesika that the trial Chairman erred when he included again the names of the parties who have already been expunged/ removed from the application. Here the counsel admits that there was/is an error on the impugned judgment by the trial Tribunal. It appears the rectification of the impugned Judgment was done by the appellants instead of the trial Tribunal. It is a trite law that where the Judgment contain errors, the parties can apply for the Tribunal or the court within which the judgment was issued for rectification, however, no party is authorised to rectify the court's judgment on behalf of the court or tribunal. It was the duty of the appellants to seek for rectification of the said errors on the impugned judgement before the trial

Tribunal and not this Court. As a result, the failure to accommodate all the names of the parties in the previous proceedings, makes the appeal defective, hence it is incompetent for bringing a complete new case with different parties at the appeal level. Resultantly, the appeal is struck out with costs. It is so ordered. 6

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Prepared on 14 October 2026 · Esheria