

TANZANIA / JUDGMENT

MISC LAND APPEAL NYAMBISI MARO

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT - LAND DIVISION
(MUSOMA SUB REGISTRY AT MUSOMA) Misc. LAND APPEAL No. 14 OF 2023 (Arising from the
District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 158 of 2021;
originating from Kenyamonta Ward Tribunal in Land Dispute No. 73 of 2021) NESPHORY
MATOGORO..... APPELLANT Versus NYAMBISI
MARO..... RESPONDENT

JUDGMENT

21.03.2024 & 25.03.2024 Mtulya, J.: Mr. Nesphory Matogoro (the appellant) was aggrieved by the decision of the District Land and Housing Tribunal of Mara at Musoma (the district tribunal) in Land Appeal No. 158 of 2021 (the appeal) hence approached and instructed Mr. Daud Mahemba, learned counsel, to register six (6) complaints in this court to fault the decision of the district tribunal in the appeal. In brief, the appellant is complaining on the following issues: first, absence of a display of votes of members of Kenyamonta Ward Tribunal (the ward tribunal) when resolving Land Dispute No. 73 of 2021 (the dispute) in favor of the respondent; second, hearing of the dispute in the ward tribunal without official complaint in writing or oral complaint reduced into writing; third, there is evidence on record that the appellant had occupied the disputed land uninterrupted since 1982; fourth, there is no land value, size and demarcations surrounding the disputed land to distinguish it from other lands; fifth, a letter requesting representation of Mr. Nyambisi Maro (the respondent) was drafted by a Village Executive Officer (VEO) contrary to the law; and finally, no evidence on letters of administration was registered in the case to empower the respondent to sue on behalf of the deceased. According to Mr. Mahemba, all the complaints were registered and declined by the district tribunal, save for the last one, which is a point of law and can be raised at any stage of proceedings, even in an appeal. Mr. Mahemba was summoned in this court on 21st March 2024 to explain the details of the registered complaints. According to him, decisions in ward tribunals are arrived by majority of votes of members present as directed under section 4 (4) of the Ward Tribunal Act [Cap 206 R.E 2029] (the Ward Act). However, according to him, the decision of the ward tribunal delivered on 29th September 2021 did not contain either votes or opinion of each member present during the hearing of the dispute. In the opinion of Mr. Mahemba, even if the votes or opinions were reflected on the record, it is not displayed on how the tribunal initiated its proceedings as there is no official written land complaint or any oral statement reduced into writing as required by section 17 2

- (2) & (3) of the Land Disputes Courts [Cap 216 R.E 2019] (the Act) and section 11 (4) of the Ward Act. According to Mr. Mahemba, the enactment of the indicated sections used the word *shall* to show the compulsory nature of the requirement. Regarding the third complaint, Mr. Mahemba submitted that Mr. Robert Mosi, who had appeared for the respondent at the ward tribunal, testified that the appellant had used the land for almost eleven (11) years without any interference whereas the appellant had testified to have occupied and cultivated the disputed land since 1982 undisturbed until 2021. This piece of evidence, according to Mr. Mahemba, was corroborated by two witnesses in the ward tribunal, namely Mr. Merengari Chacha, who had rented the disputed land from the appellant in 1985 and Ms. Nyahende Pius, who had cultivated the disputed land in 1983 and 1984 under the directives of the appellant's wife. Mr. Mahemba submitted further that the ward tribunal initiated the dispute *suo moto* without any written complaint to show value, size, and demarcations surrounding the disputed land to distinguish it from other surrounding lands, which are very important factors in resolving land disputes brought in ward tribunals. According to Mr. Mahemba, section 15 of the Act requires value of dispute lands to be 3 specifically stated in the complaint and ward tribunals' mandate is set at Tanzania Shillings Three (3) Million Only, for that matter. On the fifth ground, Mr. Mahemba submitted that the respondent was represented by Mr. Robert Mosi (Mr. Mosi) at the ward tribunal as a relative, but the representation was effected in a letter drafted by Nyagasense Village Executive Officer (VEO) without specification of date or persons' pictures attached in it. According to Mr. Mahemba, the letter introduces Mr. Mosi as a representative of Mr. Hamis Nyambisi, in a land suit for the land which belonged to Mr. Maro Nyambisi. According to Mr. Mahemba, the name of the respondent Mr. Nyambisi Maro is not mentioned in a letter and it was drafted contrary to the law regulating representation of parties in ward tribunals enacted in section 13 (3) of the Ward Act and section 18 (2) of the Act. In the opinion of Mr. Mahemba, a party who prays for representation in a land suit, must appear himself and request a ward tribunal on the subject, but the respondent had declined appearance, request and production of evidence during hearing of the dispute in the ward tribunal. Mr. Mahemba submitted further that in the instant appeal, the record shows that the land in dispute is allegedly to have belonged to Mr. Maro Nyambisi, who has already expired. However, according to him, the record is silent on how the land shifted from the deceased to 4 Mr. Nyambisi Maro, who claims to be the rightful owner of the disputed land. Finally, Mr. Mahemba prayed: first, this court may wish to put record right by quashing decisions of both lower tribunals and order the dispute to start afresh in accordance to the law; or second, scrutinize the evidence on record and declare the appellant as a rightful owner of the disputed land for a long occupation of the disputed land without any interruptions. Mr. Mahemba complained that the district tribunal was informed on the indicated series of faults and invited to read the precedent of this court in *Dr. James Kilaza v. Chacha Mago*, Land Appeal No. 128 of 2020, but had declined the arguments in favor of section 45 of the Act. Replying the reasons of appeal, Mr. Mosi who had appeared as a representative of the respondent submitted that Mr. Mahemba has just brought legal technicalities in this court, which were ignored by the lower tribunals. In his opinion, the lower tribunals resolved the dispute in favor of justice of the parties, and not

legal technicalities. In replying the first reason, Mr. Mosi stated that the members of the ward tribunal had voted by appending their signature at the end of the decision of the ward tribunal hence the appellant cannot complain on want of specific opinion of each member of the ward tribunal. On the second reason of appeal, Mr. Mosi submitted that Mr. Mahemba tells lies in this court because the letter which introduced 5 Mr. Mosi to the ward tribunal was drafted by Kenyamonta Executive Officer (WEO), and not VEO. According to Mr. Mosi, the letter was enough evidence of representation as the respondent is illiterate. Regarding long stay of the appellant on the disputed land, Mr. Mosi submitted that the appellant had testified to have bought the land and stayed on it since 1982, but had declined to tender evidence of sale contract in the ward tribunal. Mr. Mosi submitted further that the value of the land was not stated in the dispute or displayed during hearing of the dispute, but that is not fatal as size and demarcations were displayed on the record during questioning of witness Max Ndege and Charles Chacha. Finally, Mr. Mosi submitted that the disputed land belongs to Mr. Maro Nyambisi, who had transferred all his properties before expiry to the respondent, and a clan meeting had sat to appoint the respondent to administer the deceased's estates. In a brief rejoinder, Mr. Mahemba submitted that the respondent cannot be pronounced as a rightful owner of the disputed land as: first, his name does not appear in the letter which introduces Mr. Mosi; second, he did not testify before the tribunal during the hearing of the dispute; third, a clan meeting shows nomination of the respondent as a right and fit person to administer the deceased's estates, but he declined to complete the legal process of appointment 6 by the court to obtain Form No.4; and finally, this court may wish to peruse the evidence on record and pronounce the appellant as a rightful owner of the disputed land. I have perused the record of present appeal and scrutinized the letter which is alleged to have empowered Mr. Mosi to initiate proceedings at the ward tribunal and stand for the respondent. In brief, the letter is silent on a drafter and where it was directed. It has two (2) passport size photographs of two different persons without their names or any other indication of identity. There are two

- (2) official stamps of two (2) public institutions, namely: first, Kenyamonta Ward Executive Officer located at the bottom part of the letter; and second, Nyagasense Village Executive Officer at the top of the letter. The letter is also appended with two signatures without names and positions at the bottom part of the letter. The contents of the letter briefly show that: familia ya Maro Nyambisi Marungu imemteua Ndg. Robert D. Mosi wa Iramba Nyagasense kusimamia kesi ya kiwanja cha Hamisi Nyambisi kiiichopo Kijijini Nyagasense aiichopewa na Baba yake Maro Nyambisi urithi dhidi ya mdaiwa Nesphory Matogoro. The name Hamisi Nyambisi is not reflected anywhere on the record apart from the letter. Similarly, the land which was cited in the letter had no 7 descriptions to be distinguished from other lands within Nyagasense Village. During production of evidence in favor of the respondent in the ward tribunal, neither the respondent, Nyambisi Maro nor Hamisi Nyambisi who had appeared and registered evidence on his own. Mr. Mosi who is alleged to have appeared for Hamisi Nyambisi on the other hand had testified before the ward tribunal that: eneo hi/o ni maliya Mzee Maro Nyambisi...aiyehamia Kijiji cha Kemugongo Mwaka 2003 na kufariki

Mwaka 2009. Regarding the letter of administration of Mzee Maro Nyambisi, the record is silent. However, during the hearing of the instant appeal at this court, Mr. Mosi claimed that there is a clan meeting which appointed the appellant to administer estates of the deceased, Mr. Maro Nyambisi. I perused the record and found: Kikao cha Kumteua Msimamizi wa Mirathi ya Marehemu Maro Nyambisi Marungu aiiyefariki Mwaka 2009 katika Kitongoji cha Nyamatoke Wiiaya ya Serengeti. The paper in brief, reads that: ...hadi kifo cha marehemu aiikuwa na maii zifuatazo: baiskeii moja (phoenix), vifaa mbaiimbaii vya ujenzi na ufundi, kiwanja kwa ajiii ya kiiimo kiiichopo Kitongoji cha Kangusa-Nyamatare, Kiwanja kiiichopo katika Kijiji cha Nyagasense-Wiiaya ya Serengeti na ng'ombe wawiii. Hivyo, Kikao cha Ukoo kwa kauii moja waiimteua Hamisi 8 Nyambisi Maro kuwa msimamizi wa mirathi ya marehemu Mzee Maro Nyambisi Marungu. The record is silent on how the paper found its way into the record. It is silent whether it was brought by Mr. Mosi or the respondent. Similarly, the proposed administrator of the deceased's estates was Hamisi Nyambisi Maro whereas the respondent in the instant appeal is Nyambisi Maro. The record is silent on whether Hamisi Nyambisi Maro is the same and similar person as Nyambisi Maro. The record is also silent as to whether Hamisi Nyambisi Maro had approached Serengeti Primary Court placed at its locality in order to comply with the provisions regulating administration of estates of deceased persons enacted in our laws (see: The Probate and Administration of Estates Act [Cap. 352R.E.2002] (the Probate Act); The Magistrates' Courts Act [Cap. 11 R.E. 2019] (The Magistrates Act) and The Primary Courts (Administrator of Estates) Rules, GN. No. 49 of 1971 (the Probate Rules). Paragraph 2 of the 5th Schedule to the Magistrates Act empowers primary courts to appoint administrators of deceased persons' estates whereas sections 71 and 100 of the Probate Act recognize and empower administrators to deal with the properties of deceased persons, and where necessary to sue in respect of all causes of action that survive the deceased. The record in the instant appeal is silent on 9 whether there is any letter of administration of the deceased's properties possessed either by respondent or Mr. Mosi. This is unfortunate on part of the respondent. In the present appeal, there are confusions in terms of names of the owners of the disputed land, descriptions of the land in dispute and who had initiated a dispute before the ward tribunal. Similarly, assume Hamisi Nyambisi is the same person as Hamisi Nyambisi Maro and is the same person known as Nyambisi Maro (the respondent), it still unknown whether the said Hamisi Nyambisi was granted land by the deceased before his expiry as a gift or administrator of the deceased's estates. While the alleged letter of representation introduces him as an owner of the disputed land given by the deceased before his demise, the alleged clan meeting introduces him as nominee and fit person to administer the deceased's estates, including the disputed land. Letting all raised issues in the instant appeal intact and unresolved, the question of evidence of letters of administration of the deceased's estates is an important factor in initiating disputes in courts of law. In the present record, both parties are not in contest that the alleged owner of the disputed land had expired and no letters of administration of the deceased's estates was registered in the ward tribunal. The Court of Appeal (the Court) has already directed that 10 failure to plea and attach the instrument constituting the appointment is fatal irregularity which renders the proceedings in a suit

incompetent for want of necessary standing (see: Ramadhani Omary Mbuguni v. Ally Ramadhani & Another, Civil Application No. 173 /12 of 2021). According to the Court, at page 4 of the Ruling: It is now a settled law that a party commences proceedings in representative capacity, the representative constituting the appointment must be pleaded and attached. Regarding appropriate available remedies in such circumstances, the Court at page 5 of the Ruling, had resolved that the application before it was incompetent hence struck it out for want of necessary standing. Finally, the Court had left the applicant in the application at liberty to refile fresh and proper application attached with valid letters of administration of the estates of the late Rukia Ndaro. The position of the Court found support of the same Court in the precedent of Ally Ahmed Bauda [Administrator of the Estates of the Late Amina Hossein Senyange] v. Raza Hussein Ladha Damji & Others, Civil Application No. 525/17 of 2016. and this court has been following the move in a bunch of precedents without any reservations (see: Nathaniel Waluse Nyabange v. M/S J.C. Igogo ii Enterprises (1992) T. Ltd & Seven Others, Land Case No. 26 of 2022; Sirasi Wambura Chacha Mtoki v. Julius Wambura Nyigesa & Another, Land Revision No. 3 of 2023; Asafu Ibrahimu Maradufu v. Leonard Josiah Maradufu & Another, Misc. Land Appeal No. 33 of 2022; and Salehe Rajabu Ukwaju [Administrator of The Estates of the Late Rajabu Abdallah Ukwaju] & Two Others v. Marwa Wambura Ogunya & Another, Land Case No. 1 of 2022). I am aware that Mr. Mosi during the hearing of the appeal had complained the issue of locus standi had taken its course at the appeal stage hence it may be declined. He is right and the record supports his complaint. However, an issue of law challenging jurisdiction of the court or tribunal may be raised at any stage of the proceedings, even in an appeal. That is the position of our superior court (see: R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai, Civil Appeal No. 179 of 2016 and). This court has noted and cherished the precedent in decisions of Agripa Fares Nyakutonya v. Baraka Phares Nyakitonya, Civil Appeal No. 40 of 2021 and Morris Mess Akoto v. Zulfa Joseph Akoto, (PC) Civil Appeal No. 78 of 2022. This court, apart from its usual powers, it has additional powers to revise any proceedings resolved in the district tribunals in exercising their original, appellate or revisional jurisdiction, if it 12 appears that there are errors material to the merits of the case involving injustice to the parties (see: section 43 (1) (b) of the Act and precedent in Benson Ndaro Makulie & Another v. Rose Makenge Ruge, Land Revision No. 8 of 2023). The indicated irregularity is material to the merit of the dispute, and if it is left unattended, it may trigger endless litigations as any one within the Nyambisi family may wish to sue on the same land as he so wishes. It is now established practice that this court and Court of Appeal, being the courts of records, have additional mandates to ensure proper application of laws by lower courts or tribunals. Where there are glaring irregularities on records of lower courts or tribunals, this court cannot justifiably close its eyes. It will address and rectify them without any hesitation (see: Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed, Civil Appeal No. 262 of 2017 and Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti, Land Case Appeal No. 12 of 2021). In the instant appeal, there is vivid breach of the law regulating locus standi hence the proceedings of the lower tribunals must be set aside and decisions quashed for want of necessary standing. In the end, I invoke the additional mandate of this court

enacted under section 43 (1) (b) of the Act, to nullify all proceedings and quash all decisions of the lower tribunals for want of right record. For the 13 foregoing reasons, I find the present appeal was brought in this court with sufficient reasons to protest the decisions of the lower tribunals. The same has merit and hereby allowed without costs. The reason is obvious that this court had declined to pronounce on the rightful owner of the disputed land and the dispute may take a new course. I am conversant that Mr. Mahemba had registered a bundle of complaints in this appeal to be resolved by this court. However, replies to the indicated questions will be an academic exercise after having found that the proceedings in the lower tribunals were incompetent for want of necessary standing. This court cannot take off-schedule its precious time to resolve redundant issues. It is so ordered. This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, Mr. Nesphory Matogoro and in the presence of the respondent's representative, Mr. Robert Daud Mosi. Judge 25.03.2024 14

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Prepared on 14 October 2026 · Esheria