

TANZANIA / JUDGMENT

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14 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB REGISTRY LAND REVISION No. 14854 OF 2024 (Arising from the Judgment and Decree of the District Land and Housing Tribunal for Ngara in Land Application No. 10 of 2018 dated 22nd of June 2022 before Hon. R. Mtei Chairperson) THE ATTORNEY GENERAL.....

APPLICANT VERSUS LEAH P. SEMUGURUKA (Administrator of the Estate of Late Nathanael Miburo Semuruguka) ..... 1ST RESPONDENT SERIKALI YA KIJIKI MUKIREHE ..... 2ND RESPONDENT HALMASHAURI YA WILAYA YA NGARA ..... 3RD RESPONDENT RULING OF THE COURT. Date of last order:14/2/2025 Date of ruling:14/2/2025 BEFORE:G.P.MALATA,J The applicant filed an application for revision against the respondents. In return the 1st respondent filed counter affidavit with preliminary objection. The preliminary was to the effect that; The affidavit in support of application is fatally defective for containing hearsay evidence thus in contravention of Order XIX Rule 3 (1) of Civil Procedure Code, Cap. 33 R.E 2019. When this matter came for hearing on 14/02/2025. Parties appeared represented. The applicant appeared through Mr. Victor Joseph Mhana learned State Attorney Page 1 of 4 whereas the 1st respondent appeared through Mr. Themistocles Rwegasira learned counsel and Mr. Malik Abbas Mweneyuni learned Senior State Attorney appeared for the 2nd and 3rd respondents. Mr. Themistocles Rwegasira learned counsel made extensive submission on the point of law. Basically, he stated that, the affidavit was defective for the reasons that, one it mention another person as originator of the facts deponed and that other person did not swear affidavit to eliminate the hearsay evidence, two, he stated that the deponent of the two affidavit for the applicant and 2nd and 3rd respondents are Attorneys thus they did not indicate if they were in conduct of the proceeding before. To bolster his submission he cited the case of Lalago Cotton Ginnery and Oil. Co. Ltd vs. LART Civil application 80/2002 where the Court positioned the extent to which an advocate can swear an affidavit, three, he State that, the source of information contained in the affidavit were not disclosed by deponents. To cement the position he referred the Court to the Book on Law of Affidavits by Justice P. S. Narayana, J 7th edition, 2012. The author stated that in an affidavit source of knowledge should be disclosed with sufficiently particularity. Finally Mr. Rwegasira learned counsel submitted that, the application is incompetent for being supported by defective affidavit. He prayed the application to be struck out with cost. Page 2 of 4 In reply, thereof, both counsels for the applicant and 2nd and 3rd respondents conceded to the point of law. Additionally Mr. Victor Joseph Mhana learned State Attorney honestly assisted the Court by making reference to case of Kellen Rose Rwalatale, Kuntu

and 3others vs. Zithay Kabuga Misc. Land Application No. 89/2023 where this Court held that: “Advocate can swear and file an affidavit in proceeding in which he appears for his client but in matters that are in the Advocate personal knowledge i.e. He can swear an affidavit that, he appeared in the proceedings for his client and that he personally knew what transpired during those proceeding” In the event, he conceded to the preliminary objection with a prayer for waiver of the costs. Having gone through various position by the Court on the point of law raised, it is with no iota of doubt that, the application is incompetent for being supported by defective affidavit as correctly submitted by Mr. Themistocles Rwegasira learned counsel. As the point of law has been conceded by the parties, this Court finds no need to discuss much on it but just rule that the application is incompetent for being supported by fatally defective affidavits. Consequently, I hereby struck out the application. Page 3 of 4 In the event, the applicant is granted leave to file proper application if he so wishes within twenty one (21) days from the date of this ruling. I desist from granting costs to the applicant given the nature of the matter and the applicant. ORDER ACCORDINGLY. DATED at BUKOBA 14th February, 2025. G. P. MALATA JUDGE 14/02/2025 RULING Delivered at BUKOBA this 14th February,2025 G.P.MALATA JUDGE 14/2/2025 Page 4 of 4

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