

IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: MJASIRI, J.A., MWARIJA, J.A., And MWANGESI, J.A.)

CIVIL APPEAL NO. 6 OF 2015

BIFA FITA APPELLANT

VERSUS

MAWE MAIRO VILLAGE GOVERNMENT 1ST RESPONENT

MOHAMED SHABAN 2ND RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania at
Arusha)**

(Mwaimu, J.)

Dated 5th day of March, 2014

in

Land Case Appeal No. 20 of 2013

RULING OF THE COURT

4th & 8th Dec. 2017

MWARIJA, J.A.:

This appeal is against the decision of the High Court of Tanzania sitting at Arusha in Land Case Appeal No. 20 of 2013. The impugned decision arose from the judgment of the District Land and Housing Tribunal of Manyara (the Tribunal) in Application No. 164 of 2009 (the Application). The appellant, Bifa Fiita instituted the Application in the Tribunal against the respondents, Mawe Mairo village Council and Mohamed Shabani claiming for a shamba having an estimated value of shs.3,200,000/=. The shamba is situated in

Mawe Mairo village in Magugu Ward, Babati district. The Tribunal awarded the appellant one acre out of the total area of the claimed land. In his evidence, the appellant had contended that the shamba was measuring three or four acres.

Aggrieved by the decision of the Tribunal, the appellant appealed to the High Court. According to the record, the respondents were also dissatisfied with the Tribunal's decision and thus preferred an appeal, Land Case Appeal No. 23 of 2013. It is also reflected in the record, at page 168, that the respondents' appeal was consolidated with the appellant's appeal No. 20 of 2013. Despite the consolidation, the High Court heard and determined only the appeal which was lodged by the appellant.

In its decision, the High Court found the appellant's appeal devoid of merit. Having re-evaluated the evidence on record, the learned High Court Judge was of the view that the appellant had failed to adduce sufficient evidence proving his case on the balance of probabilities. Although with respect, the learned Judge did not specify whether or not the evidence was insufficient to prove ownership of the whole area of the claimed land, since the award by the Tribunal to the appellant, of the one acre was not reversed,

we are of the view that the finding of the High Court concerns the portion of the shamba other than the one which was awarded to the appellant.

The appellant was further aggrieved by the decision of the High Court. He preferred this appeal raising four grounds in his memorandum of appeal. For the reasons which will be apparent herein, it became unnecessary to consider the appeal on merit.

At the hearing, the appellant was represented by Mr. John Materu, learned counsel while the respondents had the services of Mr. Duncan Oola, learned counsel. At the outset, Mr. Materu pointed out certain irregularities in the record of the Tribunal. One of the irregularities relates to the institution of the Application in the Tribunal. He submitted that, from the contents of the Application, the applicant was the administrator of the estate of the late Slaa Fiita who is alleged to have owned the claimed shamba. The appellant did however, lodge the Application in his own name instead of doing so in his capacity as the administrator.

Relying on the provisions of O.XXX r. 1 of the Civil Procedure Code [Cap. 33 R.E. 2002], (the CPC), the learned counsel submitted that the appellant wrongly brought the claim in his own name. He stressed that the

appellant ought to have filed the Application on behalf of the beneficiaries in his capacity as the administrator of the deceased's estate. According to the learned counsel, the irregularity renders the proceedings of the Tribunal a nullity because of lack of *locus standi* on the part of the appellant. Mr. Materu submitted however that the anomaly can be rectified through amendment of pleadings. He thus urged us to exercise the powers of revision vested on the Court by s. 4 (2) of the Appellate Jurisdiction Act [Cap. 141 R.E. 2002] (the AJA) by quashing both proceedings of the Tribunal and the High Court, set aside the judgments and order a retrial of the Application after amendment of the pleadings. He also prayed for an order directing each party to bear its own costs.

Mr. Oola supported the submission made by the learned counsel for the appellant. He did not also, have any objection to the prayer regarding costs.

Having considered the unopposed submission made by the learned counsel for the appellant, we agree that, indeed the Application was improperly filed in the name of the appellant. Under O.XXX r. 1 cited by Mr. Materu, the Application ought to have been instituted by the appellant on

behalf of the beneficiaries of the estate of the late Slaa Fiita. The appellant had however wrongly claimed the shamba in his personal capacity.

The governing law to that effect, as cited by Mr. Materu ,is O.XXX r. 1 of the CPC which provides as follows:

*"In all suits concerning property vested in a trustee, executor or **administrator**, whether the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator **shall** represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit, but the court may, if it thinks fit, order them or any of them to be made parties."*

[Emphasis added].

On the basis of the above stated provision of the law, we are inclined to Mr. Materu's submission that the anomaly renders the proceedings of the Tribunal a nullity. As a consequence, in the exercise of the Court's revisional powers under s. 4 (2) of the AJA we hereby quash the proceedings and set aside the judgment of the Tribunal. Similarly, since the proceedings of the High Court were founded on the Application which was filed contrary to the law, we also hereby quash the same and set aside the resultant judgment.

The original record shall be returned to the Tribunal for a trial *denovo* before another Chairman and new set of assessors subject to amendment by the appellant, of the Application.

Each party shall bear its own costs.

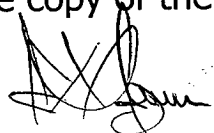
DATED at **ARUSHA** this 7th day of December, 2017.

S. MJASIRI
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL