

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND REVISION NO. 33 OF 2018**

*(Arising from Judgment and Decree in the District land and Housing Tribunal for Temeke  
Application No. 325 of 2015)*

**ANWAR JUMA RASHID ..... APPLICANT**

**VERSUS**

**OMARY BAKARI MBAHU ..... RESPONDENT**

**RULING.**

**S.M. MAGHIMBI, J:**

The applicant lodged this application under the provisions of Section 43(1) (b) of the Land Disputes Courts Act, Act No. 2 of 2002 ("The Act") seeking for the following orders:

1. That this Honorable court make revision on decree and judgment of the District Land and Housing Tribunal for Temeke in Applications No. 325/2018 dated 08<sup>th</sup> September, 2017.
2. Costs of this application be provided for
3. Any other order this Honourable court may deem fit and just to grant.

The application is supported by the affidavit of the applicant Anwar Juma Rashid dated 15<sup>th</sup> day of October, 2018. Mr. Edwin Msigwa, learned advocate represented the applicant while the respondent appeared in person and unrepresented hence the application was disposed by written submissions.

In his submissions to support the application, Mr. Msigwa submitted that the judgment of the tribunal is very clear that the case was heard ex-parte because the respondent is dead (pg 2 of the judgment). That the late Mburu was the former owner of the land and after his death, his wife was appointed administrator and on 20/12/2013 she sold the land to the applicant. He argued that both Tatu Mkumba and the applicant are alive and reachable when application No. 325/2015 subject of this revision was filed in the tribunal.

Further that one cannot sue a dead man and the law allows administrators of the estate to be sued hence the right person to be sued was Tatu Mkumba. Mr. Msigwa prayed that this court revise the decision of the tribunal.

In reply, the respondent submitted that before hearing and delivering judgment in Application No. 325/2015, the Honorable Chairman of the tribunal called the respondent to appear and the summons showed that Ibrahim Nassoro Mburuis dead but no person appeared at the tribunal to prove his death and that death is just submitted by an interested person. He also submitted on the issue of ownership and how he acquired the land, submissions which I find to be irrelevant and premature at this stage.

I have gone through the records and the decision of the tribunal indeed, the records of the tribunal show that during the pendency of the suit, it came to the knowledge of the tribunal that the respondent was dead. Surprisingly, somehow the applicant then (respondent herein) managed to convince the tribunal that he was appointed the administrator (pg 2 of the

judgment) and interestingly so, the tribunal aired that fact and proceeded with the matter without substituting the respondent with the administrator of his estate.

More so interesting, the tribunal on the last page of its judgment held:

***"but the respondent did not advanced sufficient explanation on how he came to be the owner of the suit premises".***

At this point, one may wonder how the tribunal would expect a dead person to come and explain how he became the owner of the suit premises. By rising from the grave? What the tribunal did was grossly erroneous and completely condemned the deceased estate unheard given the allegation that there was in fact an administrator of the said estate.

Since the applicant alleges to have gained interest in the property and he was not involved the application, I find this to be a good ground to revise the proceedings. Furthermore, given the strange fact that the tribunal Chairman proceeded to determine the matter against a person he knew was dead, make the whole proceedings, judgment and decree therein a nullity. Consequently, all the proceedings, judgment and decree of the tribunal are nullified. The applicant shall have his costs.

Dated at Dar es Salaam this 20<sup>th</sup> day of May, 2020

  
.....  
**S.M MAGHIMBI**  
**JUDGE**

