IN THE DISTRICT LAND HOUSING TRIBUNAL FOR IRINGA

AT IRINGA

APPLICATION NO: **19** OF 2012

DISMASS KIHOO .....APPLICANT

VERSUS

THABIT MSIGARA .....RESPONDENT

FINAL SUBMISSION BY THE COUNSEL FOR THE RESPONDENT

YOUR HONOUR,

May it please you to learn that the defense case has heavier evidence than that from the prosecution side in the following:

The testimony of **THABITI MSIGALA (DW1)** purported that he is the administrator of the deceased's estate of his late father **THEITA MSIGALA** who died in 2010. And he produced a letter that appointed him to be Administrator of the deceased of the late **THEITA MSIGALA** which was accepted by the Tribunal as **Exhibit D1**.

He testified that the applicant's father one **JOSEPH KIHOO** had been given one acre by the family of **MSIGALA** in which he built a house and planted trees and fruit trees around the said house. He said this one acre of piece of land has no dispute.

He further said that the applicant's father invaded the land in dispute which is outside one acre that belonged to him that led to the respondent's father **(THEITA MSIGALA)** to sue the applicant's father before the village council. The applicant's father one **JOSEPH KIHOO** made back the invaded land to the respondent's father one **THEITHA MSIGALA i**n 1994.

The Respondent's father continued using the land in dispute without interruption. The applicant's father died in 2003 and the applicant's mother continues using the one acre without invading the land in dispute. However in 2010 the Applicant one **DISMASS KIHOO** invaded the land in dispute that led to the respondent's father one **THEITA MSIGALA** to open a land case before the village council against the applicant.

However the Applicant filed a criminal case against the Respondent's father in Kilolo Primary Court. And later on he appealed in the District Court of Iringa. The District Court dismissed his Appeal and directed him to land Courts hence this Application. The Respondent further said that his father died in 2010 and then he was appointed as the administrator of his deceased father. He prayed that the Application be dismissed with costs.

RICHARD MSIGALA (DW2) who testifies that the land in dispute belongs to late **THEITA MSIGALA**. And he worked in the land in dispute for making timbers in 2002. He bought trees from the late **THEITA MSIGALA** for the purpose of making timbers. There was no dispute between the late **THEITA MSIGALA** and the Applicant. The late **THEITA MSIGALA's** land was bordered by mission, primary school, yetel Kahemela and Applicant's father. He knew the piece of land that belongs to **JOSEPH KIHOO** who is the Applicant's father.

WILBERT MBOGO (DW3), who testifies that in 1990's there was a conflict between the Respondent's father one **THEITHA MSIGALA** and the Applicant's father one **JOSEPH KIHOO** that was resolved by the Village Council . **JOSEPH KIHOO** returned the land in dispute to the Respondent's father. There after they both lived in peace and harmony. But later on there was again a dispute between the Applicant one **DISMASS KIHOO** and the Respondent's father in 2010. The land in dispute belongs to the Respondent's father.

YOUR HONOUR,

The evidence testified by the **DW1, DW2**, and **DW3** proved that the land in dispute belongs to the Respondent's father one **THEITA MSIGALA**. And the Applicant invaded the land outside the one acre that belonged to his late father.

YOUR HONOUR,

The Applicant's case is weak in law. **DISMAS KIHOO (PW1**), Filed his Application claiming that the land in dispute belongs to him. He testified that he lived in the land in dispute since 1966. He is 45 years old now. He said the land in dispute measures 40 acres and it has pecuniary value of 30 Million. He further purported that his father acquired the land in dispute from one **SHAULITANGA MSIGALA** who was the father of the Respondent's father.

FELISIA KINDOLE (PW2) testified that she is the mother of the Applicant. She says that the land in dispute belongs to all her children. Her late husband one **JOSEPH KIHOO** and she built a house in the land in dispute and they shifted to **KIDABAGA** Village in 1974 during villagilization. And she said that there was no dispute between them and the Respondent's family. The deceased properties are not distributed to her heirs.

ANGELINA KIHOO (PW3), who testifies that the land in dispute belong to their late father one **JOSEPH AKYOO**. She said that there are ten (10) children now left by our father and the land is not distributed among us but now is owned by **DISMASS KIHOO.**

ADRIANO KIHOO (PW4), He said that **DISMAS KIHOO** has been empowered by us to stand on our behalf. The land in dispute measures about 38 acres. The land in dispute belongs to all of us the children of the late one **JOSEPH KIHOO.**

MICHAEL KIHOO (PW5): Testifies that their father one **JOSEPH KIHOO** died in 2003. He said that there is no legal document of appointing **DISMAS KIHOO** to be the administrator of the deceased estates of the late **JOSEPH KIHOO.** The land in dispute is ours.

VITUS KINDOLE (PW6): who testifies that the land in dispute belongs to the late one **JOSEPH KIHOO** who shifted to **KIDABAGA** village in 1974. He doesn't know the size of the land in dispute. I didn't know how he got it. **FELISTA KINDOLE** is my sister who was the wife of the late **JOSEPH KIHOO.**

WENDELINI MTWEVE (PW7), he said that **JOSEPH KIHOO** stayed at lowland and **THEITA MSIGALA** lives at upland. He said that he does not know the demarcation between their lands. He further said that after the death of the **JOSEPH KIHOO,** his land is owned by his children.

YOUR HONOUR,

All witnesses of the Applicant testify that the land in dispute belongs to her of the Applicant but the Applicant has no legal document for allowing him to sue on behalf of the late **JOSEPH KIHOO**. It is a trite principle in law that one who want to sue somebody must shows first that he has sufficient interest on property in dispute as it was observed in the case of **GERVAS MASOME KULWA vs. THE RETURNING OFFICER AND OTHERS [1996] TLR 320** where it was held that:

> "**A person bringing a matter to a court should**
> **be able to show that he is entitled to bring it**
> **before the court and that his rights or interest**
> **has been breached or interfered with"**

YOUR HONOUR,

In the present case the Applicant has failed to prove that he has locus standi to file this suit on behalf of the deceased father one **JOSEPH KIHOO** or he has been empowered by his fellows as he has the power of attorney or letter of administrator of the deceased estate.

There were three issues to be proved in this Trial

1. Whether the Applicant is rightful owner of the land in dispute
2. Whether the Respondent trespassed the land in dispute
3. Which reliefs the parties deserve to get

On the first issue, it was well established that the land in dispute was outside one acre of that owned by late **JOSEPH KIHOO**. And the Applicant is not an administrator of the late **JOSEPH KIHOO**. Therefore it is not proved that the land in dispute belongs to the Applicant.

The second issue is obviously not proved that the Respondent trespassed the Applicant's land as the applicant has no land in the dispute area.

The third issue is again obviously that the Applicant does not deserve any relief. The Respondent deserves to get costs of the suit.

YOUR HONOUR,

The Respondent prays that this case be dismissed with costs.

I humbly submitted.

Dated at Iringa this …….....……. day of …….....….. 2012

…….....…
ADVOCATE FOR RESPONDENT

Presented for filling this …….....…… day of .....…...2012

...……

TRIBUNAL'S CLERK

DRAWN AND FILED BY:

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COPY TO BE SERVED UPON

THE APPLICANT