

IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MBAROUK, J.A., LUANDA, J.A. And JUMA, J.A.)

CIVIL APPEAL NO. 113 OF 2015

JOHN MASWETA.....APPELLANT

VERSUS

GENERAL MANAGER MIC (T) LTD.....RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
at Mwanza)**

(Mgetta, J.)

Dated the 19th day of June, 2014

In

Land Appeal No. 91 of 2014

RULING OF THE COURT

26th & 30th May, 2016

MBAROUK, J.A.:

When the appeal was called on for hearing on 26th May, 2016, the Court wanted to satisfy itself as to whether the proceedings conducted in the District Land and Housing Tribunal Mwanza in Application No. 194 of 2008 were properly conducted. That prompted us to raise a question *suo motu* as to whether the assessors in that trial Tribunal

were involved and participated in the proceedings. This is because, the record shows that, from the outset when the proceedings started on 27-10-2008 before Chairman E. Mogasa no assessors were involved. Even at the time when the application was called on for hearing on 22-01-2009 the record shows that, the Chairman framed the issues and proceeded to hear the applicant (PW1) in the absence of the assessors. At page 39 of the record of appeal it shows that, the Chairman wrote "Questions from Assessors" but there is no where on record that the assessors were selected and have asked questions. The record of appeal also shows at page 42 when another Chairman by the name of C.H. Mwashambwa took over on 5-02-2009 two assessors were selected namely Mrs. Juma and Mr. Lusato. However, the record of appeal shows at page 55 that when PW2 testified, no assessors were recorded to be present. Thereafter, the record shows that it was until at the time of defence hearing which started on 20-03-2012 before another Chairman by the name of A. Kapinga when one previous assessor Mrs. Juma

and a new assessor Mrs. Manyanda were involved in the proceedings and put questions.

In this appeal, the appellant appeared in person, unrepresented. He readily conceded to the anomaly raised by the Court *suo motu* and asked the Court to reach to a decision it thinks proper.

On his part, Mr. Cuthbert Tenga, learned advocate for the respondent, considering the irregularities pointed out by the Court, he urged us to invoke section 4(2) of the Appellate Jurisdiction Act and nullify all the proceedings before the District Land and Housing Tribunal as well as those before High Court and consequently order a retrial.

According to section 23(1) of the Land Disputes Court Act, Cap. 216 R.E. 2002 (the Act) it is mandatorily stated as follows: -

"23.(1) *The District Land and Housing Tribunal established under section 22 shall be*

***composed of one Chairman and
not less than two assessors."***

(Emphasis added).

This means that the proper composition of the District Land and Housing Tribunal is that the Chairman has to sit with not less than two assessors. On the other hand, section 23(2) of the Act further states as follows:

"(2). The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment."

As pointed out earlier, the record of proceedings before the District Land and Housing Tribunal does not show that the Chairman sat with assessors. For example, when the complainant testified, the record does not show that the Chairman sat with assessors. We are of the considered

opinion that, that was a clear violation of the provisions of section 23(1) of the Act.

In concretizing the compliance with the provisions of section 23(1) and (2) of the Act, this Court in the case of **The General Manager Kiwengwa Strand Hotel v. Abdallah Said Musa**, Civil Appeal No. 13 of 2012 (unreported) stated as follows: -

"...such conditions (but not restricted to) the active and effective participation of assessors in the proceedings and giving of their opinion at the conclusion of the trial and before the judge delivers his judgment/ruling and order."

(Also see the case of **Samson Njarai and Another v. Jacob Mesoro**, Civil Appeal No. 98 of 2015 (unreported).

The record also shows at page 61, a new assessor by the name of Mrs. Manyanda took over from a previous

assessor Mr. Lusato and participated in the hearing of the defence case. We are of the view that it was wrong to allow an assessor who had not heard the testimonials and observe the demeanour of previous witnesses who testified earlier in a trial. The erstwhile Court of Appeal for Eastern Africa in the case of **Joseph Kabui v. Regiham** [1954-55] E.A.C.A. Vol. XX1-2, 260, the Court held that:

"Where an assessor who has not heard all the evidence is allowed to give an opinion on the case, the trial is a nullity."

The above stated irregularities render the proceedings before the District Land and Housing Tribunal Application No. 198 of 2008 a nullity. We our accordingly invoke our revisional jurisdiction conferred upon us under section 4(2) of the Appellate Jurisdiction Act and nullify the entire proceedings before the Tribunal together with the subsequent proceedings before the High Court in Land Appeal No. 91 of

2014. Consequently, we quash them and order a trial *de novo* before another Chairman and another set of assessors, with no order as to costs as the matter was raised by the Court. It is so ordered.

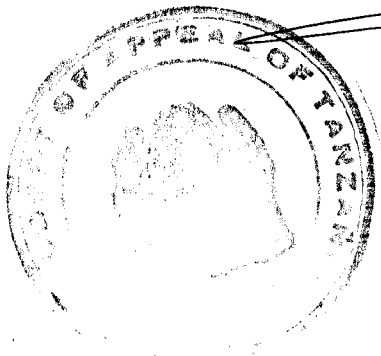
DATED at **MWANZA** this 28th day of May, 2016.

M.S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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



A handwritten signature in black ink, appearing to read "J.R. Kahyoza", is written over the seal.

J.R. KAHYOZA
REGISTRAR
COURT OF APPEAL