

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MUSSA, J.A., LILA, J.A., And MKUYE, J.A.)

CIVIL APPEAL NO. 70 OF 2017

Y. S. CHAWALLA & CO. LTD.....APPELLANT

VERSUS

DR. ABBAS TEHERALI.....RESPONDENT

(Appeal from the decision of the High Court of Tanzania at Tanga)

(Rugazia, J.)

dated 24th day of October, 2014

in

Land Appeal No. 15 of 2013

JUDGMENT OF THE COURT

12th & 20th February, 2019

MUSSA, J.A.

In the Tanga District Land and Housing Tribunal, the respondent successfully sued the appellant over breach of a tenancy agreement with respect to a house on Plot No. 18, Market Street, Central area, Tanga. In the final judgment and decree of the Tribunal, the respondent was awarded an eviction order against the appellant as well as some other ancillary reliefs.

The appellant was aggrieved but, on appeal, the High Court (Rugazia, J.) dismissed the quest, save for the awarded interest on the decretal amount which was reduced from 25% to 7%. Still aggrieved, the appellant presently seeks to impugn the verdict of the High Court upon a memorandum of appeal which is comprised of three points of grievance.

When the appeal was placed before us for hearing, the appellant was represented by her Managing Director, namely, Mr. Yahaya Seif Chawalla, whereas the respondent had the services of Mr. Obediodom Chanjarika, learned Advocate.

From the very outset, we prompted Mr. Chawalla to express whether or not the suit was appropriately disposed by the District Tribunal. Our concern was particularly on account that, during the trial, the Tribunal Chair was assisted by several assessors in succession and, what is more, their opinions, if they were made, are no show in the record of proceedings of the Tribunal.

More particularly, it is noteworthy that from the 31st January 2013, when the proceedings were commenced, the Tribunal Chair sat with two assessors, namely, Mr. Said and Mrs. Mkomwa up to the 2nd April 2013

when the latter (Mrs. Mkomwa) went amiss. Fortunately, there was no business on that date but, on the following day, Mrs. Mkomwa was replaced by Mr. Bakari and, on that date, the issues were framed and the respondent's testimony was heard to a finish. The matter was then adjourned to the 17th April, 2013 whence Mrs. Mkomwa re-emerged to assist the Chairperson along with Mr. Said. On that date, a witness for the respondent, namely, Rashid Abdi testified, whereupon the respondent rested his case. A little later on that same date, the appellant gave testimony before the case was adjourned to the 25th April, 2013.

On the scheduled day, the Tribunal was at it again, this time with a completely new set of assessors, namely, Mr. Bakari and Ms. Mwanajohari. On that day the testimony of a certain Jacob Lema, a witness for the appellant, was adduced before the case was adjourned to the 9th May, 2013. Incidentally, the last two assessors were on the coram of the scheduled day and assisted the chairperson up to the close of the appellant's case.

From the foregoing narrative, it is quite apparent that in the course of trial, different sets of assessors were featured to assist the chairperson. Unfortunately, as we have already hinted, this was not the only misnomer

which undermined the proceedings of the trial Tribunal. As it turns out, it is not patent from the record of proceedings that the assessors gave their written opinions as required by the law.

In response to the ailments to which we drew attention to the parties, the appellant readily conceded that the proceedings of the Trial Tribunal were incurably defective to the extent that this appeal has been rendered incompetent. He prayed that the entire proceedings of the Tribunal as well as those of the first appellate court should be nullified in revision. On his part, Mr. Chanjarika went along and supported the submissions of the appellant.

Having heard the parties, we confirmed our concern that, in the course of trial, the Tribunal Chairperson was irregularly aided by different sets of assessors. The irregular procedure did not augur with the provisions of section 23(3) of the Land Disputes Courts Act, Chapter 216 of the Revised Edition of 2002(the Act) which goes thus:

"Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal either or both members of the Tribunal

who were present at the commence of proceedings is or are absent, the Chairman and the remaining member (if any) may continue and conclude the proceedings notwithstanding such absence."

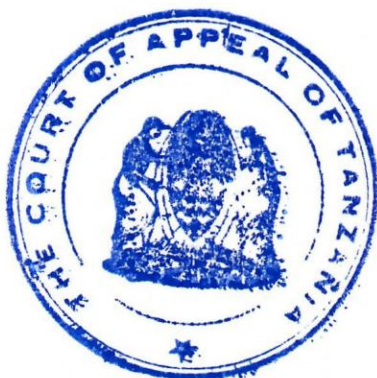
As we have vividly demonstrated, in the proceedings under our consideration, there was an unwarranted replacement of assessors on several occasions. The replacement offended the clear provision of the law which we have extracted and will alone, suffice to vitiate the trial proceedings of the Tribunal.

But, as we have intimated, the other shortcoming is in the fact that the opinions of the assessors are not reflected upon the record. The non-compliance is, again, in breach of section 23(2) of the Act which provides:-

"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."

We do not entertain a heck of doubt that the cumulative effect of the recited irregularities is to vitiate the trial proceedings as well as those of the first appellate Court. Accordingly, we are constrained to invoked our revisional jurisdiction under section 4(2) of the Appellate Jurisdiction Act, Chapter 141 of the Revised Edition of 2002. In fine, we hereby nullify the entire proceedings of the Trial Tribunal as well as those comprised in the High Court Civil Appeal No. 70 of 2019. It is further ordered that the respondent's action be heard afresh before another Chairperson and a new set of assessors. As the shortcoming giving rise to our nullification was raised by the court, *suo motu*, we give no order as to costs.

DATED at **TANGA** this 19th day of February, 2019.




K. M. MUSSA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

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


E. Y. MKWIZU
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL