

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT ARUSHA**

LAND APPEAL NO. 34 OF 2017

*(Originating from the decision of the District Land and Housing Tribunal of
Kiteto District at Kiteto in Land Case No. 4 of 2017)*

FRED MWALYAGILE.....APPELLANT

VERSUS

PANCRAS PERUZI.....RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

At the Kiteto District Land and Housing Tribunal at Kibaya, vide Land Application No. 04 of 2017, the appellant herein unsuccessfully sued the respondent for recovery of piece of land measuring 30 acres situated at Kimala Village in Kiteto District invaded by the respondent November 2016. Aggrieved and dissatisfied by the whole of the said judgment and decree of the Tribunal, on 28th August, 2017, the appellant lodged this appeal raising eight (8) grounds of appeal as hereunder:

1. That the Honourable Chairman of the District Land and Housing Tribunal grossly erred in Law and fact for not considering the evidence and testimonies of the witnesses of Applicant.
2. That, the Honourable chairman of the District Land and Housing Tribunal Grossly erred in Law and fact by believing in the testimonies of the witnesses of the respondents which were full of contradictions and material discrepancies.

3. That, the Honourable Chairman of the District and Housing Tribunal grossly erred in law and fact by believing and went on deciding in favour of the respondent without tangible material evidence produced by the respondent or his witnesses before the tribunal.
4. That the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and fact for not considering the evidence and findings of the visit in quo done on the 20/8/2015.
5. That the Honourable chairman of the District Land and Housing Tribunal grossly erred in law and in fact for not stating the reason to differ with the opinion of the assessors.
6. That, the Chairman of the District Land and Housing Tribunal grossly erred in law and by went giving decision while his order to produce document were not fulfilled by the respondent.

Before me, the appellant was represented by Mr. Kong'oke Pastor, learned Advocate and the respondent appeared in person and unrepresented. By an order of the Court dated 27th November, 2017, the appeal was disposed by way of written submissions.

Having gone through the records of this appeal and the submissions thereto, the appellant is mainly contending on the evidence adduced by the respondent to his ownership to the disputed land. The main contention is that the respondent's documents in support of his ownership to the disputed land did not prove his ownership. However, my further perusal of the whole proceedings of the Tribunal, I did not see any place where the documents that were attached in both the application and the written statement of defence to have been tendered in court as evidence. The Tribunal however relied on those documents in

its judgment. This is in total contravention of Section 51(1) (a) of the Land Disputes Courts Act, Cap. 216 R.E 2002 (The Act) which subjects the tribunal to the applicability of both the Civil Procedure Code, Cap 33 R.E 2002 (The CPC) and the Evidence Act, Cap. 6 R.E 2002 (The Evidence Act). The provision of Section 51(1)(a) is quoted:

*51.-(1) In the exercise of the respective jurisdictions, the High Court and District Land and Housing Tribunals **shall apply the Civil Procedure Code, 1966 and the Evidence Act, 1967.***

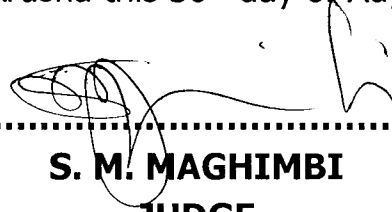
(a) subject to regulations made under section 49 may accept such evidence as is pertinent, and such proof as appears to be worthy of belief, according to the value thereof and notwithstanding any other law relating to the adduction and reception of evidence;

The irregularity goes to the root of the way the proceedings was conducted. The Tribunal was subject to the strict adherence of the Evidence Act and the CPC as such, before it relied on the documents that were annexed in the parties' pleadings, those documents were supposed to be tested, cleared for admission and actually admitted before the Tribunal could rely on them in making its decision. Otherwise they are just pieces of papers lying in the files of the tribunal and not evidence for the purpose of proving an issue before it.

The irregularity observed vitiates the whole of the proceedings and consequently the judgment and findings made in relation to those documents. Consequently, I hereby invoke my revisional powers by quashing and setting aside the proceedings, judgment and decree of the trial tribunal. I further order that the file of Application No. 04/2017 be remitted back to the trial tribunal to be heard de-novo before another

Chairperson and a new set of assessors. Owing to the circumstances of the appeal, each party shall bear their own costs.

Dated at Arusha this 30th day of August, 2018



.....

S. M. MAGHIMBI
JUDGE