

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO 03 OF 2017**

(C/F The District Land and Housing Tribunal for Manyara Region at Babati Land Appeal NO 73 of 2016, Originating from Babati ward tribunal land case No 04 of 2016)

**ABDI ISSA HIDDA.....APPELLANT**

**VERSUS**

**RICHARD H. MBWAMBWO.....RESPONDENT**

**JUDGMENT**

**DR. OPIYO, J.**

The Appellant has been aggrieved by the decision of the District Land and Housing Tribunal of Babati in Land Appeal No 73 of 2016. He has preferred the present appeal on the following grounds of Appeal which are:-

1. That, the 1<sup>st</sup> appellate tribunal erred in law and fact for failure to properly evaluate evidence adduced by the appellant thereby rendering the decision and decree thereon which is not maintainable at law.
2. That, the 1<sup>st</sup> appellate Tribunal erred in law and in fact for holding that the appellant did not make any submission during hearing of the appeal while he submitted basing on his grounds.

3. That, the 1<sup>st</sup> appellate tribunal is bad in law for failure to record and include opinion of assessors during hearing of the appeal thereby arriving at erroneous judgment.
4. That, the 1<sup>st</sup> appellate tribunal ought to have made a finding of fact that the decision of the trial tribunal was illegal as the quorum which made the decision was not according to the law.
5. That, the 1<sup>st</sup> appellate tribunal erred in law and fact for failure to see that the change of chairperson who visited locus in quo was not the one who gave the judgment and orders therein.
6. That, decision of the 1<sup>st</sup> appellate tribunal is bad in law for lack of legal reasoning.

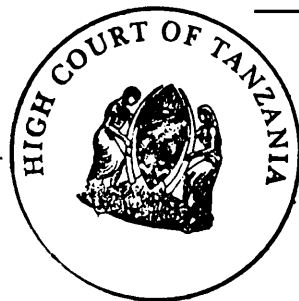
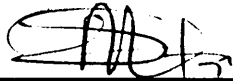
Before this court, the appellant and respondent appeared in person (unrepresented). Hearing of the appeal proceeded by the way of written submission.

I have considered parties submission for and against the appeal. However before going to the merits of the case, the Court noted a matter which needs its consideration first, I have gone through the Babati ward tribunal record in both the hand written version as well as the typed proceedings, and I have not seen any Judgment. What can be seen on record is what is written " Mwenendo wa Shauri" meaning 'proceedings.' In my view

“mwendo wa shauri” is something different from judgment, in that footing, the reasonable conclusion to be reached is that the ward tribunal did not compose any judgment capable of being appealed against. Judgment is what determines the rights of the parties. In absence of the same, nothing can be done out of the proceedings appearing in record. There was nothing to appeal against to the District Land and Housing Tribunal of Babati.

The normal course of events in such situation is to remit back the file to Babati Ward Tribunal so that the proper judgment can be composed, but for another irregularity noted, to be explained shortly, I refrain from so holding. In the purported trial tribunal proceedings, it is indicated that the chairperson of the Tribunal was Eliasa Abdi Kallo together with three other members, Farida Juma, Jumanne Juma Shauri and Moleli Chako. However, the indicated chairperson did not sign, the one who as a chairperson is Farida Juma who originally appeared as a member at the beginning of the proceedings. Nowhere signature of Eliasa Abdi Kallo is indicated. That brings doubt in his participation in the conduct of this matter and to what extent. This is because, his name appears only at the beginning of the proceedings as a chairperson, but at the end the signature in place of the chairperson appears that of Farida Juma. In the circumstances, it is not clear as who was indeed a chairperson of the tribunal in the conduct of this matter. If it is Eliasa Abdi Kallo, then he was the one who was supposed to sign at the end of the proceedings as a chairperson. And, if the chairperson was Farida Juma, in absence of Eliasa Abdi Kallo, the proceedings should

have indicated so from the beginning, instead of confusion that has been created, as the tribunal's Coram would still be proper, in terms of section 14(1) of the Land Dispute's Court Act, Cap 216 R.E 2002 which requires not less than 3 members for proper composition. Confusion noted above leads to incurable defect in the conduct of tribunal proceedings. Having finding so, I hereby nullified the proceedings of the trial tribunal and consequently nullify the proceedings and decision of the District Land and Housing Tribunal for Manyara (first appellate court) for being based on proceedings of a trial court that had been nullified. I therefore remit back the file to the trial court, from Babati Ward Tribunal for trial *de novo*. I make no order as to costs.



**DR. M. OPIYO,**

**JUDGE**

**27/08/2018**