IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 18 OF 2011

(From the Decision of the District Land and Housing Tribunal of Dodoma District at Dodoma in Land Case No. 91 of 2010)

ALEX MHAGAMA & 2 OTHERS.....APPELLANT

VERSUS

AMAR REMTULA & OTHERS.....RESPONDENT

JUDGMENT

24/1/2019 & 28/1/2019

KITUSI, J.

I am aware of the principle that was stated more than two decades ago by the Court of Appeal in **Amiri Mohamed V. Republic** [1994] TLR 138 that;

> *"Every magistrate or judge has got his or her own style of composing a judgment, and what vitally matters is that the essential ingridients shall be there, and these include critical analysis of both the prosecution and the defence."*

That statement, in my view, is as relevant in criminal cases as it is in civil or land cases as the instant.

Back on 26th May 2011 Hon. Mwaipaja, sitting as Chairman of the District Land and Housing Tribunal (DLHT) for Dodoma District dismissed an application that had been preferred by Alex Mhagama Said Amiri and Kalist Jamal the first, second and third appellants respectively. In their pleadings the appellants had alleged a right to occupy and carry on business on a corridor along premises that were being occupied by Annar Remtula and Hima Security, the respondents. The cause of action was an alleged eviction unlawfully carried out by the respondents against the appellants, causing damage to their assets in the process. They claimed for a declaration that the eviction was unlawful and prayed for payment of shillings ten million as general damages.

In dismissing the claims the learned Chairman stated;

> *"In hearing this suit I sat with two assessors. They have the opinion that the applicants were not tenants in the suit premises, hence not entitled to that (sic) premises.*
>
> *I Share (sic) with their views. Applicants are not tenants rather invitees who have no rights over (sic) a premises, even a cockroach (sic) can evict them from the premises."*

The appellants were unhappy with that decision and appealed to this court since June 2011 and unsurprisingly the first ground of appeal relates to the demeaning statement by the learned Chairman that even a Cockroach could have evicted the appellants.

The first ground of appeal reads thus;

> *"1. THAT, the trial tribunal erred in law and in fact by holding that the appellants were not lawful tenants but mere invitees to (sic) house in dispute and thus have no rights over the said premise,* ***even a cockroach can evict them*** *from the premises."*

If I have to rely on a decision in a Criminal case again, in **Joseph Lushika @ Kusaya & Another V. Republic**, Criminal Appeal NO. 18 of 2014 CAT (unreported), it was observed;

> *"As the court observed in the case of Kabula Luhende (supra) it is the responsibility of the courts and tribunals entrusted with the duty of administration of justice to ensure that the litigants before them are assured of a fair trial. Apart from ensuring strict compliance to the procedural rules the court or tribunal should* ***always refrain from making prejudicial statement tending to create the impression of determining the rights of the parties before they are heard*** *on the issue pending before the court...."*

Because of the turn of things that has necessitated the parties to address a procedural issue rendering the intended consideration of the merits of the appeal uncalled for, I shall only conclude this part by observing that the learned Chairman's statement was as unfortunate as it was unfair. Mr Ngongi and Mr Kalonga learned advocates who appeared

for the appellant and respondents respectively expressed similar sentiments in their submissions on that point.

When the appeal came up for hearing Mr Ngongi prayed for and was granted leave to raise a supplementary ground of appeal which, he was persuaded, would dispose of the said appeal. This, he was granted under Order XXXIX Rule 2 of the Civil Procedure Code, CAP 33. The new ground is that the Tribunal was not properly constituted because the two members (assessors) who sat on trial on the first date of trial were different from the other set of assessors who continued on the subsequent dates. The learned counsel submitted that what the Tribunal did was in violation of section 23(1) and (3) of the Land Disputes Courts Act, 2002. He prayed that the entire proceedings of the Land Tribunal be declared null and orders be quashed giving any of the parties an option to commence the proceedings.

Mr Fred Kalonga for the respondents towed the line and prayed for similar orders. Both counsel were of the view that if granted, the orders prayed for should not attract costs.

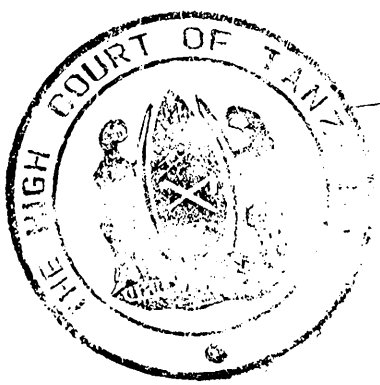
It is true that the first set of assessors who attended when the appellant Alex Mhagama testified as PW1 were not the same that sat on trial on the subsequent dates and that is against section 23(3) of the Land Disputes Courts Act, 2002 which requires that in the event of the two assessors being unable to proceed, the Chairman should. The proceedings from which this appeal arises were, with respect, null and I so declare.

The learned counsel did not pray for an order of trial *de novo* and I think they candidly reached that stance for a reason. This case has been in court since 2010 and I am not too sure that it may benefit either of the parties if the proceedings were re-opened.

On the parties to this appeal, the second and third appellants have been wrongly cited as so in this matter. This is because when the appeal had previously been dismissed for want of prosecution, they did not take part in having it restored. It is only Alex Mhagama who pursued the application for restoration and later this appeal.

Consequently the appeal is partly allowed in that the proceedings of the trial Tribunal are nullified and orders arising therefrom quashed. For the reasons stated above, I make no order for trial *de novo* so that any interested party may be at liberty to institute a fresh suit bearing in mind the circumstances of the case.

I make no order as to costs.



I.P. KITUSI

JUDGE

28/1/2019