

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 1 OF 2020

GILVAS ISHENGOMA_____ **APPELLANT**

VERSUS

JACKSON MSETI_____ **RESPONDENT**

(arising from the decision and orders of the District Land and Housing Tribunal for a Tarime at Tarime, Hon. Philip, Chairman, in Land Appeal No. 122 of 2016 dated 12.04.2019)

RULING

Date of last order; 14.05.2020

Date of ruling; 29.05.2020

GALEBA, J.

The dispute in this appeal was first filed by the respondent JACKSON MSETI as civil case no 8 of 2016 in Sirari Ward Tribunal on 28.04.2016. The Ward Tribunal decided that the land in dispute is the property of Tarime District Agricultural Department and the appellant GILVAS ISHENGOMA ought to start processes to deliver the land to the Ward Agricultural Officer of Sirari Ward. This meant that the respondent's action was dismissed and he was aggrieved. On 04.11.2016, the respondent filed Land Appeal No. 122 of 2016 in the District Land and Housing Tribunal for Tarime. The tribunal heard the appeal but 27.07.2017 Hon. Mayeye, chairman of the Tribunal dismissed it ordering the respondent JACKSON MSETI to sue a proper party if he desired to pursue his rights, if any. The respondent did not give up.

He filed land appeal no 74 of 2017 before the high court at Mwanza. On 24.07.2018, this court, Maige J, quashed the judgment of the District Land and Housing Tribunal because it did not reflect that opinions of assessors were considered. This court maintained that the tribunal had offended the mandatory provisions of **section 24 of the Land Disputes Courts Act [Cap 216 RE 2002]**. The High Court ordered a retrial of the matter before a different chairman. The original record was remitted to Tarime and the matter was assigned to Hon. Philip, chairman for retrial. The tribunal heard the case and declared JACKSON MSETI the lawful owner of the land in dispute. This decision aggrieved the appellant, and although he was late in filing the appeal, but with extension of time from this court he managed to file it on 31.12.2019.

The complaint of the appellant in this appeal is predicated on 4 substantive grounds of appeal, but for reasons that will become obvious momentarily; this court will not get into the grounds just as quickly as it should have.

When I was preparing for hearing of this appeal, it became notable that before the chairman (Hon. Philip) composed the judgment of the Tribunal she did not receive any opinion from any of the assessors she sat with. Let the last part of the proceedings from page 10 to 12 speak for itself;

"COURT XX RESPONDENT

- There are 2 pieces of lands which have been allocated to the Government.**
- The one I am living and the one in dispute.**
- I came to Sirari in 1990.**

*-I started to use the land in 1991.
-I was given the land by the agricultural department
-My neighbors came before the Ward Tribunal to adduce evidence.*

Order; Judgment 20.12.2018

Sgd

Chairman

08/11/2018

08/11/2018 (sic)

Coram

Philip D.

Appellant; Present

Respondent; Present

Court; The case is for the judgment and it is hereby adjourned by the court.

Order; Judgment 29.03.2019

Sgd

Chairman

08/08/2019 (sic)

12/04/2019

Coram

Philip D.

Assessors; 1. Mr. Mwangwa

2. Mrs. Monge

Appellant; Present

Respondent; Present

Court; The case is for the judgment and it is hereby delivered in the presence of the parties. Right of appeal is fully explained.

Sgd PHILIP D.

CHAIRMAN OF THE TRIBUNAL

12/04/2019."

When this appeal came up for hearing on 14.05.2020, the appellant was not present with notice of the hearing so this court ordered that the matter would proceed **ex parte**. The court put the above query to the respondent for confirmation and he stated that indeed he did not see any of the assessors giving their opinion before the judgment could be composed and delivered.

Considering the record of the Tribunal above and the confirmation of the respondent, the position is that the tribunal did not legally receive any opinion of assessors before it could compose its judgment. Admittedly there is on record the handwritten opinion of assessors but there is no record showing that such opinion was given and read in the tribunal in the presence of parties after closure of evidence before delivery of the judgment. It is the holding of this Court that, that was unlawful for it is contrary to **section 23(2) of the Land Disputes Courts Act [Cap 216 RE 2002]** (the Land Disputes Act) and **Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2002 GN 174 of 2003** (the Regulations).

The law is that for any judgment of the Tribunal to be lawful, it must emanate from proceedings in which both components of the Tribunal, a chairman and the assessors fully participated. That is as per regulation 19(2) of the Regulations which provides that:

“(2) Notwithstanding sub regulation (1), the chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili.”

Subsection (1) of section 23 of the Land Disputes Act provides for the composition of the tribunal and subsection (2) provides for the roles of those who compose the tribunal. Those provisions are to the effect that;

"23-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.

(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 a judgment."

That means the chairman can only reach a judgment after requiring and receiving opinion from assessors who participated in the case.

The Court of Appeal has decided on this matter on many occasions including in **CIVIL APPEAL NO 286 of 2017 EDINA ADAM KIBONA VERSUS ABSOLOM SWEBE (SHELI) COURT OF APPEAL (UNREPORTED)** where that Court held at page 6 that;

"We wish to recap at this stage that in trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate at the conclusion of evidence, in terms of Regulation 19(2) of the Regulations, the chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili. That opinion must be in the record and must be read to the parties before the judgment is composed."

The omission to require and receive opinion of assessors is a fundamental procedural error culminating into miscarriage of justice with consequences of vitiating proceedings and the entire trial before the Tribunal.

In the circumstances, under the provisions of **section 43(1)(b) of the Land Disputes Courts Act [Cap 216 RE 2002]**, instead of determining the grounds of appeal, this Court nullifies proceedings, the judgment and all orders made by the District Land and Housing Tribunal for Tarime and orders a rehearing of land appeal no 122 of 2016.

Each party shall bear his own costs as the issue was raised by neither of the parties.

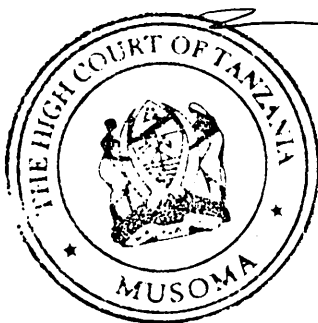
DATED at MUSOMA this 29th May 2020




Z. N. Galeba
JUDGE
29.05.2020

Court; This ruling has been delivered today on 29th May 2020 in the absence of parties but with leave not to enter appearance in chambers following the corona virus outbreak globally and the medical advice to maintain social distance between individuals.

Order; Sufficient copies of this ruling be deposited at the Judgment Collection Desk for parties to collect their copies free of charge.




Z. N. Galeba
JUDGE
29.05.2020