

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 51 OF 2020

NYAMBOFU MALIMA _____ **APPELLANT**

VERSUS

1. BONIPHACE KARUGURU _____ **1ST RESPONDENT**

2. DEUS MAZIGO _____ **2ND RESPONDENT**

(Arising from the decision and orders of the District Land and Housing Tribunal for Mara at Musoma, Hon. Kitungulu, Chairman, in Land Appeal No. 31 of 2019 dated 14.01.2020)

RULING

Date of last order; 14.05.2020

Date of ruling; 29.05.2020

GALEBA, J.

The complaint in this appeal started in Kasuguti Ward Tribunal in Bunda District as civil case no 6 of 2018 in which the appellant was complaining against the respondents for trespassing on his family's two farms measuring 18.15 acres and 15.29 acres respectively. In justifying their settlement on the farms, the 1st respondent stated that he was allocated the land by the party in 1980 and the 2nd respondent stated that he was allocated the land by the village government. As both respondents had no documentations in respect of the alleged allocations of the pieces of land, the Ward Tribunal ordered the respondents to vacate the land from 25.01.2019 when its judgment was passed. The respondents were aggrieved by the decision of the Ward Tribunal so they appealed to the District Land and housing Tribunal of Mara at Musoma (the Tribunal). The Tribunal heard the appeal and finally it set aside the

judgment of the Ward Tribunal on grounds that the matter was time barred because the respondents had lived on the farms for 39 years and they were therefore the rightful owners of the farms. The appellant was aggrieved by that decision hence the present appeal. In pursuing the appeal the appellant lodged three substantive grounds of complaint.

When this matter was called on for hearing on 14.05.2020 and before we were to get to the substance of the appeal, the court inquired from parties on whether the assessors' opinion was given to the chairman before he could compose the judgment. That inquiry was based on the fact that on 15.10.2019 after the Tribunal had fully heard the appeal it adjourned the matter to 04.12.2019 for receiving opinion of assessors but on the latter date no opinion was received instead the matter was further adjourned to 14.01.2020 for receiving the opinion. However on that date, that is 14.01.2020 instead of receiving opinion of assessors, the tribunal delivered its judgment. In response to the court's inquiry, the appellant submitted that he did not see any assessors reading their opinion in the Tribunal before the judgment was delivered. On the other hand the 1st respondent submitted that it is possible that the opinion was read because he is now elderly and his hearing ability has diminished. Like other parties, the 2nd respondent, did not see assessors reading their opinion to the chairman before the judgment was delivered.

To put the above revelation in context, below is the record of what transpired from 15.10.2019 to 14.01.2020;

"Date; 15.10.2019

Coram
Kitungulu E. Chairman
T/Ass: Mr. Babere & Mr. Swagarya
Appellant: Present
Respondent: Present
T/C : Pude

Bwire Venance Karugulu

The 1st Appellant is sick. The 2nd appellant is barred (sic) of his sister. They pray for another date.

Winifrida Malima; The respondent is sick.

Court: Matter be adjourned.
Order: Opinion. 04.12.2019

Kitungulu, E.
Chairman
15.10.2019

4/12/2019
Coram
Kitungulu E. Chairman
T/Ass: Mr. Babere & Mr. Swagarya
Appellant: Present
Respondent: Present
T/C : Pude

Mr. Mahemba; I am for the appellant
Order: Opinion. 14.01.2020

Kitungulu, E.
Chairman
4/12/2019

Date; 14/1/2020
Coram
Kitungulu E. Chairman
T/Ass: Mr. Babere & Mr. Swagarya
Appellant: Present
Respondent: Present
T/C : Pude

Court: Judgment read over today in the presence of the respondent and her advocate Mr. Mahemba. The appellants are absent without notice. Right to appeal granted (sic)."

Kitungulu, E.
Chairman
4/12/2019."

The foregoing record of the Tribunal and the confirmations of parties show that indeed the tribunal did not legally receive any opinion of assessors before it composed its judgment. This court

hastens to hold that that omission was an illegality in view of **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). Legally for a judgment of the Tribunal to be lawful, that judgment must be composed by the chairperson after he has received opinion of assessors he sits with. That is the requirement of 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."

That is so because in terms of subsection (1) of section 23 of the Land Disputes Act the tribunal is not only the chairman, but the chairman and the assessors put together. Each component of the tribunal has roles to play as provided under section 23(2) of that Act. 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."

The chairman therefore can only reach a judgment after requiring and receiving opinion from assessors with whom he sits in hearing the matter.

The above position has been the guidance of the Court of Appeal in many decisions including **CIVIL APPEAL NO 287 OF 2017; TUBONE**

MWAMBETA VERSUS MBEYA CITY COUNCIL CA (UNREPORTED), CIVIL APPEAL NO 70 OF 2017; Y. S. CHAWALA & CO. LTD VERSUS DR. ABBAS TEHERALI, CA (UNREPORTED) and CIVIL APPEAL NO 286 of 2017 EDINA ADAM KIBONA VERSUS ABSOLOM SWEBE (SHELI) COURT OF APPEAL (UNREPORTED) in which the Court held 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."

In this case, the above provisions of law were offended contrary to the practice and procedure established by statute for Tribunals to abide with. In the circumstances, this court shall not entertain the appeal because the same emanated from a nullity. Under the provisions of **section 43(1)(b) of the Land Disputes Courts Act [Cap 216 RE 2002]**, this court nullifies the proceedings, the judgment and all orders made by the District Land and Housing Tribunal for Mara and orders a trial **de novo** of land appeal no 31 of 2019 before a different chairman. Each party shall bear his own costs.

DATED at MUSOMA this 29th May 2020




Z. N. Galeba
JUDGE
29.05.2020

Court; this ruling has been delivered today the 29th May 2020 in the absence of parties but with leave not to enter appearance

following the corona virus outbreak 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