IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL NO. 38 OF 2019

(Arising from the decision of the District Land and Housing Tribunal of Tarime at Tarime in Land Appeal No. 83 of 2018)

SILA WARYOBA ..... APPELANT

VERSUS

LOIS OKEYO ..... RESPONDENT

JUDGEMENT

Date of Last Order: 24/04/2020
Date of Judgement: 22/05/2020

KISANYA, J.:

This is a second appeal. It is traced from Application No.9 of 2018 filed by the appellant in the Mirare Ward Tribunal, claiming that the respondent had trespassed on the land allocated to his father in 1975. On the other hand, the respondent claimed to be the lawful owner of the disputed land since 1971. After full trial, the respondent was declared the lawful owner of the disputed land.

The appellant was dissatisfied with that decision. He appealed to the District Land and Housing Tribunal (Appeal No. 83 of 2018) hereinafter referred to as "the appellate Tribunal." One of the four grounds of appeal before the appellate Tribunal was to the effect that, the trial Tribunal failed to draw the sketch plan of the disputed land. The appeal was heard on merit and the appellate Tribunal visited at the *locus in quo*. At the

end, the appellate Tribunal upheld the decision of the trial Tribunal. Thus, the appeal was decided in the favour of the respondent. It considered, *inter alia*, that the land was allocated to the respondent by the clan meeting which was chaired by the appellant in 1971 and that the respondent won Application No. 1 of 2011, in respect of the disputed land. Still aggrieved, the appellant has filed the present appeal. He has advanced the following two grounds:

1. *That, the trial Chairman erred in law and fact by failing absolutely to address the Appellant's 4th ground of appeal yet it forms the basis of the dispute because it's the Appellant averment that the suitland is totally different with the Respondent's land that was granted to her by the Mirare Ward Tribunal in the case number 1 of 2011.*
2. *That, the Chairman erred in law and fact by not only disclosing the Tribunal visited the locus quo but also, he concealed his findings as the visitation and even failed to show the measurement of the suitland and its borders on his judgement.*

At the hearing of this appeal, the appellant was represented by Mr. Paul Obwana, learned advocate and the respondent appeared in person, legally unrepresented. In addition to the above grounds, the Court asked the parties to address also whether the opinion of assessors was sought and given in accordance with the law. This issue was raised after noting that the two assessors who sat with the Chairman were not asked to give their opinion and the proceedings do not show that the opinion was given in the presence of the parties.

Mr. Obwana took the floor first. He submitted in support of the appeal. On the first ground of appeal, the learned counsel faulted the appellate Tribunal for not addressing the fourth ground that, the trial Tribunal failed to draw the sketch plan of the disputed

land. The learned counsel was of the view that, had the appellate Tribunal analyzed the evidence on record, it could have come to the conclusion that the disputed land belongs to the appellant.

On the second ground, counsel Obwana submitted that the appellate Tribunal failed to record that it visited at the *locus in quo* and that, the measurement, borders and boundary neighbour were not stated or specified. Citing the case of **Avit Thadeus Masawe vs Isidory Assenga**, Civil Appeal No. 6 of 2017, CAT (unreported), the learned counsel argued that after a visit at *the locus in quo,* the appellate Tribunal was duty bound to ascertain the borders and boundary neighbour of the disputed land. He urged me to remit the case filed to the appellate Tribunal to take additional evidence on the boundaries of the disputed land.

As to the issue of opinion of assessors, counsel Obwana argued that the opinion was not given or read in the presence of the parties thereby contravening the law and vitiating the proceedings before the appellate Tribunal.

The respondent replied to all grounds of appeal. On the first ground, she submitted that the fourth ground of appeal was considered by appellate Tribunal to the extent of conducting a visit at the *locus in quo*. Regarding the second ground of appeal, the respondent stated that the appellate Tribunal noted the bounderies of the disputed land during the visit at the *locus in quo.* As to the issue of opinion of assessors, the respondent contended that the same was read by the assessors in the presence the parties to the

case. That said, the respondent asked me to dismiss the appeal for want of merit and uphold the decision of the trial and appellate Tribunals.

In his rejoinder submission, Mr. Obwana averred that the submission by the respondent was not based on the evidence on record. He argued that the proceedings do not show whether the boundaries of the disputed land were recorded and whether the opinion of assessors was read to the parties. He reiterated that, the case filed should be remitted to the appellate Tribunal to take additional evidence on the boundaries of the disputed land.

Having considered the rival arguments and the evidence on record, I find that the issues to be determined are whether the appellate Tribunal adhered by the procedures regulating visit at the *locus in quo*; and whether the opinion of assessors was sought and given in accordance with the law.

Regarding the first issue, the procedures governing visit at the *locus in quo* have been established by the case law. Generally, a visit at the *locus in quo* is conducted when the needs arise and at the discretion of the trial court or tribunal. Its main objective is to enable the court to satisfy itself on the evidence given during the trial. In land related matter, the essence of visit at the *locus in quo* is to find out the location of the disputed land, physical features thereon, boundaries and the boundary neighbor thereto. This position was stated in **Avit Thadeus Massawe** (*supra*), when the Court of Appeal cited with approval the case of **Akosile vs Adeye** (2011) 17 NWLR (Pt. 1276) that:

"The essence of a visit to locus in quo in land matters include location of the disputed land, the extent, boundaries and boundary neighbor and physical features on the land. The purpose is to enable the Court see objects and places referred in evidence physically and to clear doubts arising from the conflicting evidence if any about physical objects on the land and boundaries."

In order to ensure that the above objective is attained, there are established procedures to be observed when the trial court or tribunal decides to visit at *the locus in quo*. In Tanzania, these procedures were articulated by the Court of Appeal in the case of **Niza M.H. vs Gulamali Fazal Jonmohamed** (1980) TLR 20 as follows:

" When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, the court should attend with the parties and their advocates, if any, and with much each witnesses as may have to testify in that particular matter... When the court re-assembles in the court room, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand, or relate to the evidence in court given by witnesses. We trust that this procedure will be adopted by the courts in future."

In the case at hand, each party claims to be lawful owner of the disputed land. Further, the appellant contended that the land allocated to the respondent and the suitland in Application No. 1 of 2011 which was decided in the favour of the respondent is

different from the land in dispute. In such a case, the appellate Tribunal was justified to visit at the *locus in quo* on 11/2/2019. Both parties were present during visit at the *locus in quo*. For easy of reference, I reproduce what was recorded by the Hon. Chairperson of the appellate Tribunal:

> *"The suitland is an open land without anything on it and the suitland is having 65mts width x 65mts length.*
>
> *Signed*
> *Chairman*
> *11th February, 2019"*

Therefore, I am not in agreement with Mr. Obwana that, the appellate Tribunal did not disclose that it visited at the *locus in quo* and that the measurement of the disputed land was not stated. Those issues were disclosed and recorded as shown above.

However, it is clear that the procedure governing visit at the *locus in quo* were not complied with. Also, the objective of conducting visit at the *locus in quo* was not attained. This is because, it was not shown whether the parties or their witness testified on any aspect related to the disputed land during visit at the *locus in quo*. Further, upon resuming, the proceedings do not show whether the findings or notes taken during visit at the *locus in quo* were read over to the parties. It is also not clear as to whether the parties were asked to confirm or otherwise on the findings or notes taken by appellate Tribunal and whether they were informed to call witness (es) to give evidence on the issues identified during the visit at the *locus in quo.*

Furthermore, what was recorded by the Hon. Chairperson of the appellate Tribunal suggests that, a visit to the *locus in quo* did not attain the intended objective. As rightly

stated by the Mr. Obwana, the boundaries and boundary neigbhours were not specified. These were pertinent issues to be uncovered during visit at the *locus in quo*.

I now move to the second issue on opinion of assessors. This issue is based on the provision of section 23 (1) and (2) of the Land Disputes Courts [Cap. 216, R.E. 2002] and regulation 19(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. These provisions require the Chairperson of the District Land and Housing Tribunal to sit with not less than two assessors. After the conclusion of hearing, the Chairperson is required to ask or address the assessors to give their opinion before he/she composes the judgement. Thereafter, the opinion of assessors should be given or read in the presence of both parties. Non-adherence to these provisions vitiates the proceedings before the District Land and Housing Tribunal. This position has been stated by the Court of Appeal in several cases. For purposes of the appeal at hand, I wish to cite the case of **Tubone Mwambeta Versus Mbeya City Council,** Civil AppealNo.287 of 2017 (unreported), where it was held hat:

> *"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors...they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed...since Regulation 19(2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in*

the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict."

The record in the present appeal shows that after visit at the *locus in quo* on 11/2/ 2019, the Chairperson ordered that the judgement would be delivered on 29/03/2019. Thus the assessors were not addressed to give their opinion. Further, the judgement was delivered six months later, on 9/8/2019. The opinion of assessors was not reflected at all in the said judgement. Therefore, I find that the law was not complied with because the assessors were not addressed to give their opinion, and the record does not show whether the alleged written opinion placed in the case file was read or given in the presence of the parties.

Before concluding the discussion on the appeal, I wish to comment on the time taken to compose and deliver the judgement. Pursuant to regulation 19(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003 the Chairperson is duty bound to deliver the judgement within three months from the date of the conclusion of hearing. The provision states as follows:

"The Tribunal may, after receiving evidence and submissions under regulation 14, pronounce judgement on the spot or reserve the judgement to be pronounced later.

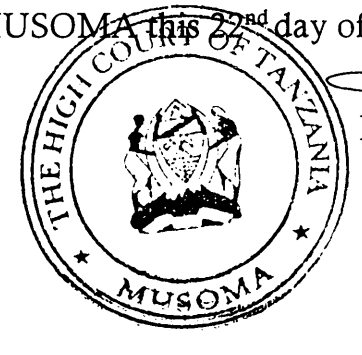
Provided that a judgement of the Tribunal shall not be reserved under any circumstances for a period exceeding three months from the date of the conculusion of such proceedings." [Emphasize supplied].

It is a mandatory requirement for the Chairperson to deliver the judgement within three months. However, in the case at hand, the Chairperson delivered the judgement on 9/8/2019 which was almost six months from the date of the conclusion of hearing on 11/2/2019. The proceedings do not what happened from 11/02/2019. Further, the Chairman did not indicate the reasons for failing to deliver the judgement within the statutory period. This is not acceptable. The court or Tribunal is reminded to comply with the law. The above provisions were tailored and intended to ensure timely justice. If the same are not complied with without any justification, it will cause to delay of justice and disorder in the administration of justice.

That said and done, I hold that the proceedings before the appellate Tribunal were vitiated by the failure to comply with the procedure governing visit at the *locus in quo,* and the omission to take the opinion of assessors in accordance with the law.

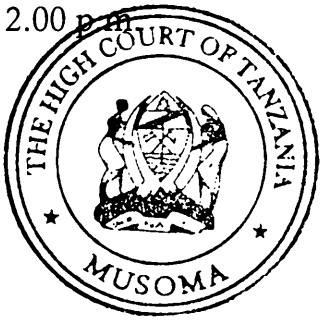
In the circumstances, I am inclined to invoke the revision powers of this Court and nullify the proceedings and quash the judgement and decree of the District Land and Housing Tribunal. I order that the case file be remitted to the appellate Tribunal for a fresh hearing of the appeal before another Chairperson and new set of assessors. I make no order to costs because the irregularities were not caused by either party. Order accordingly.

Dated at MUSOMA this 22nd day of May, 2020.



E. S. Kisanya
JUDGE
22/5/2020

Court: Judgement delivered in Chamber this 22nd day of May, 2020 in the absence of the parties with leave of the Court. Parties were notified to collect copy of judgement at 2.00 p.m.



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DECREE IN APPEAL

WHEREAS, in this appeal the appellant is praying that this honourable Court be pleased to grant the following orders:

1. Quashing the jugdement of the District Land and Housing Tribunal for Tarime.
2. Declaration that the Appellant is the lawful owner of the suitland.
3. Any further or other relief this Court may deem fit to grant.
4. Costs of this appeal be provided for.

AND WHEREAS, on **22th** day of **May, 2020** this Appeal is coming for judgement before **E.S. Kisanya, Judge** in the absence of the parties with leave of the Court.

THIS COURT HEREBY ORDERS AND DECREES THAT;

1. The Court invokes its revision powers to nullify the proceedings and quash the judgement and decree of the District Land and Housing Tribunal for Tarime at Tarime.

2. The case file is remitted to the District Land and Housing Tribunal for Tarime at Tarime for a fresh hearing of the appeal before another Chairperson and new set of assessors.
3. Order as to costs is not issued because the irregularities were not caused by either party.

Given under my **Hand** and **Seal** of the Court this **22th day of May, 2020**.

E.S. Kisanya
JUDGE