THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
LAND APPEAL NO. 15 OF 2020

(From the decision of the District Land and Housing Tribunal for Mbeya in Consolidated Application No. 90 of 2016 and 60 of 2016)

GEOFREY LAITON KYANDO.....APPELLANT

VERSUS

HENRY NYANDINDI & 21 OTHERS.....RESPONDENTS

JUDGMENT

Date of last order: *27/07/2020*
Date of Judgment: *30/07/2020*

NDUNGURU, J.

The appellant, one Geofrey Laiton Kyando, is challenging the judgment and decree of the District Land and Housing Tribunal for Mbeya (herein to be referred to as trial tribunal) in Consolidated Application No. 90 of 2016 and 60 of 2016. The second respondent and other respondents successful sued the appellant, Geofrey Laiton Kyando and the first respondent, one Henry Nyandindi claiming for the ownership of the disputed land.

The appellant felt aggrieved with the decision of the trial tribunal hence preferred the present appeal. Believing that the decision of the trial tribunal which was in favour of the respondent was not correct, the appellant lodged this appeal on seven grounds seeking to assail the decision of the trial tribunal as listed hereunder:

1. That, the learned chairman grossly erred in law for failure to involve gentleman assessors in determining the suit.
2. That, the learned chairman grossly erred in both law and fact for failure to consider the wise opinion of the gentleman assessors.
3. That, the Honourable chairman grossly erred in law for holding that the first respondent had no capacity to dispose off the suit property to the appellant.
4. That, the Honourable chairman erred in both in law and facts for holding that the suit property belonged to one Leonalf Nyandindi contrary to the evidence on record.
5. The whole of the findings of the District Land and Housing Tribunal which forms basis of decision is bad in law as the same was based on documents its authenticity was highly questionable.
6. That, the District Land and Housing Tribunal erred in law for failure to determine the appellant's grievances and claim pleaded and

addressed in application No. 60 of 2018 in consolidated applications, instead it dwelled in single application No. 90 of 2016 which was filed later.

7. That, the District Land and Housing Tribunal erred in law for nullifying the certificate of occupancy on allegations of unequal bargaining and low price on sale.

On the date of hearing of this appeal, Ms. Mary Mgaya, learned advocate appeared for the appellant whereas Mr. Felix Kapinga, learned advocate appeared for the respondents.

Mr. Kapinga did not opposed the appeal on the first ground. He conceded the first ground of appeal that the assessors were not properly involved according to Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003. Also, he referred the Court to read the case of **Edina Adam Kibona vs. Absolum Swebe (SHELL**), Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania (unreported) to cement his submission.

He further prayed the judgment and proceedings be nullified and the case be remitted for retrial. In other hand Ms. Mgays had concurred with Mr. Kapinga, the learned counsel for the respondents, also prayed be costs be waived.

That being the position I did not find anything to vary from the submission of Mr. Mgaya, learned counsel. I hereby nullify the proceedings and judgment of the trial tribunal in the Consolidated Application No. 90 of 2016 and 60 of 2016 remit the file to the tribunal for retrial before another chairperson with the different set of assessors.

I make no order as to costs on the ground that the irregularity was committed by the trial tribunal itself. The parties had no hand to that effect.

It is so ordered

D. B. NDUNGURU
JUDGE
30/07/2020

Date: 30/07/2020

Coram: D. B. Ndunguru, J

Appellant:

For the Appellant: Ms. Mgeni – Advocate

Respondents:

For the Respondents:

B/C: M. Mihayo

Ms. Rehema Mgeni – Advocate:

My lord, I appear for appellant I also hold brief of Mr. Kapinga for the respondent.

Court: Judgment delivered in the presence of Ms. Rehema Mgeni for the appellant who also holds brief of Mr. Kapinga advocate for the respondent.

D. B. NDUNGURU
JUDGE
30/07/2020