

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 59 OF 2020

NEEMA THOMAS MKURYA *(administratrix of the estate of the late THOMAS MKURYA)*

APPELLANT

VERSUS

GISSEY CHACHA **RESPONDENT**

(Arising from the decision and orders of the district land and housing tribunal for Mara at Musoma, Hon. Masao, Chairman, in land appeal no 120 of 2014 dated 01.02.2019)

RULING

Dates; 10th August and 4th September 2020

GALEBA, J.

It is not in all instances that law is a servant of justice; in some cases justice does not only become a servant of the law but its slave and indeed the latter, a slave master. This appeal is here, in the high court for the third time; first it was land appeal no 70 of 2012, later land appeal no 121 of 2015 and now before me is land appeal no 59 of 2020.

As indicated above parties knocked at the doors of the high court in 2012 with the above land appeal no 70 of 2012 which had origins from land case no. 2 of 2007 which had been decided by the Nyamimange ward tribunal (the trial tribunal). This court, (hon. Mruma J.), ordered that the matter be remitted to the trial tribunal for trial **de novo** because the district land and housing tribunal (the

appellate tribunal) had relied on evidence in land application no. 2 of 2007 which had been nullified by the same tribunal in land appeal no 185 of 2009. The matter went back to the trial tribunal for retrial as ordered but it seems the case was refiled by **GISSEY CHACHA** as land case no 16 of 2014 suing his counterpart **THOMAS MKURYA**. The former won and **THOMAS MKURYA** lost but was aggrieved and filed land appeal no 120 of 2014 in the appellate tribunal. The appeal was heard but still **THOMAS MKURYA** lost. He was aggrieved further and he filed land appeal no. 121 of 2015. On 15.05.2017, the high court (Maige J.) set aside the judgment of the appellate tribunal and remitted the original record to the district land and housing tribunal for **rehearing** of the appeal because Honorable Kaare, the chairman who had heard the appeal did not first receive opinion of assessors before he could compose a judgment.

Unfortunately, and because of the opening remark made above, this court is going to decide in like manner as the two preceding judges honorable Mruma J. and honorable Maige J. because, Honourable Masao, chairman who reheard the appeal decided in like manner as honourable Kaare without first receiving opinion of assessors, although the matter had been remitted to him to cure the very malady.


The brief background to the dispute is that according to **GISSEY CHACHA** the disputed land which is located at Sirori Simbal village measuring around 10 acres is his because it was allocated to him by



Sirori Simba village authorities in 2007 and in 2009 **THOMAS MKURYA** trespassed on it and that is when court battles started. As for **THOMAS MKURYA** he bought the land from **JULIUS MTATIRO** on 06.11.2006 so the land is his lawful property. As indicated above **GISSEY CHACHA** referred the disputed to Nyamimange Ward tribunal in Butiama district **vide** civil case no 16 of 2014 where he won, **THOMAS MKURYA** appealed **vide** land appeal no 120 of 2014 but he lost and now he is appealing before this court by his administratrix because he passed away sometime before this appeal could be filed.

To challenge the appellate tribunal in land appeal no 120 of 2014 **NEEMA THOMAS MKURYA** the widow of **THOMAS MKURYA** preferred six (6) grounds of appeal whose details, I will not get into because of the issues of law hinted upon above but whose details I will disclose in a moment.

When this appeal came up for hearing on 10.08.2020, Mr. Evance Njau, learned advocate submitted that the proceedings before the appellate tribunal were a nullity because the chairman composed the judgment challenged, without first seeking and obtaining opinion of assessors as required by law. He prayed that the proceedings be quashed and set aside and the appeal be heard afresh. In reply **MR. GISSEY CHACHA** submitted that according to his memory, everything was legally done, but he cannot fight against the law.



A keen scrutiny of the record of the appellate tribunal shows as submitted by Mr. Njau that on 01.08.2018 when parties finished submitting on the appeal the case was adjourned for judgment to 07.09.2019 (although it was supposed to be 2018). The matter then came up for judgment on 29.09.2018 but the same was adjourned for delivery to 31.10.2018. There is no record on the file as to what happened on the latter date, but what is recorded is that the judgment was delivered on 01.02.2019.


The issue before me is whether the judgment of the appellate tribunal met the necessary requirements of the law.

The law requires that for the judgment to be composed, the opinion of assessors must be given first see **Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2002 GN 174 of 2003** (the regulations) which provides that;

"19 (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."

The court of appeal has already interpreted the above regulation and it was **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;

"...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 Court of Appeal held that omission to receive opinion of assessors in the presence of parties was a fatal irregularity and it quashed the proceedings and ordered a rehearing of the matter, which decision this court will emulate. Based on the above discussion, this court does not have any reason to proceed and hear the other grounds of appeal raised.

Consequently, the proceedings and the judgment of the appellate tribunal in land appeal no 120 of 2014 are hereby quashed and nullified and the original record is hereby ordered to be remitted to the appellate tribunal for rehearing of the appeal before any chairperson and any set of assessors. Finally this appeal is struck out with no orders as to costs.

DATED at MUSOMA this 4th September 2020



Z. N. Galeba
JUDGE
04.09.2020

Court; THIS RULING has been delivered before Z. N. Galeba **JUDGE**, today the 4th September 2020 in the absence of parties but with leave of absence. Mr. Jovian Katundu, RMA is present.



Z. N. Galeba
JUDGE
04.09.2020