

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBIA DISTRICT REGISTRY)
AT BUKOBIA

MISC. LAND APPEAL No. 16 OF 2019

(Arising from the District Land and Housing Tribunal for Karagwe at Kayunga in Land Appeal No. 101 of 2018 & Original from Nyakatuntu Ward Tribunal in Land Case No. 48 of 2018)

SIMON MBARINGO ----- APPELLANT

Versus

JENETH CLEMENCE ----- RESPONDENT

JUDGMENT

02/11/2020 & 02/11/2020

Mtulya, J.:

This is an appeal preferred by Mr. Simon Mbarigo (the Appellant) to protest the decision of the District Land and Housing Tribunal Karagwe at Kayunga (the Tribunal) in Land Appeal No. 101 of 2018 (the Appeal). The Appellant registered a total of six (6) grounds of appeal. The first two grounds relate to assessors opinions and delivery of a Ruling in an appeal.

Today, 2nd November 2020, the appeal was scheduled for hearing and both parties invited legal services of Mr. Angelo Samwel for the Appellant and Mr. Mwita Makabe for Ms. Jeneth Clemence (the Respondent). Mr. Mwita was the first to set the ball rolling and conceded the first two grounds of appeal contending that this court

may quash the Ruling and orders emanated from the Appeal of the Tribunal. According to Mr. Makabe, it is correct that the Tribunal received the Appeal, but ordered struck out instead of dismissing the appeal and did not consult assessors in composing the Ruling. Finally, Mr. Makabe prayed each party to bear its own cost in the Appeal as the error was caused by the Tribunal.

On the other hand Mr. Angelo did not protest both prayers and submitted that such errors must be rectified by quashing the decision of the Tribunal in the Appeal to put record straight. Mr. Angelo submitted further that once the Appeal is quashed, parties will have an opportunity to be heard according to the law.

On my part, I have gone through the record of this appeal and found out that in the Tribunal no assessors were present during hearing of the Appeal. To this effect, assessors were not consulted during drafting of the Ruling. This is forbidden by the law in section 24 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) and precedents of this court in **Moses David v. Alouis Anthony Ghiselli**, Land Appeal No. 16 of 2017; **Kasanga Shabani v. Kasanga Hasani & Another**, Land Appeal No. 2 of 2018; and **Ponsian Kadangu V. Muganyizi Samwel**, Miscellaneous Land Case

Appeal; and the Court of Appeal's decision in **Edina Adam Kibona v. Abdallah Swebe**, Civil Appeal 286 of 2017.

I also noted that the Ruling itself has two defects, namely: First, the learned Chairman ordered struck out in an appeal instead of dismissal order; and Second, the Ruling does not meet the requirement of the law in Regulation 20 (1) of the **Land Disputes Court (District Land and Housing Tribunal) Regulations, 2003**, GN No. 174 of 2003. Having noted the defects and learned counsels of the parties in the Appeal are in agreement that this appeal must be quashed for sake of proper record of our courts, I think I have to agree with their submissions. I therefore order the following:

- i. This Appeal No. 16 of 2019 is hereby allowed;
- ii. Proceedings of the Tribunal in Appeal No. 101 of 2018 is hereby set aside;
- iii. Ruling of the Tribunal in Appeal No. 101 of 2018 is hereby quashed;
- iv. Any other order or decision emanated from the Tribunal in Appeal No. 101 of 2018 is hereby quashed;

v. This appeal is allowed without any order as to the costs as parties are in agreement on the defects caused by the Tribunal in the Ruling. Each party to bear its own costs;

vi. This appeal is remitted back to the Tribunal to hear it in accordance to the law, as quick as possible, for considering that it was filed in the Tribunal since 2018; and

vii. Learned counsels for the parties duly notified.

Ordered accordingly.




F.H. Mtulya

Judge

02.11.2020

This Judgment was delivered in Chambers under the seal of this court in the presence of the Appellant, Mr. Simon Mbaringo and his learned counsel Mr. Angelo Samwel and in the presence of the Respondent's learned counsel, Mr. Mwita Makabe.




F. H. Mtulya

Judge

02/11/2020