

IN THE HIGH COURT OF TANZANIA

AT TABORA

LAND APPEAL NO 36. OF 2018

*(Arising from Land Application No. 51/2016 Tabora District Land and
Housing Tribunal)*

DOROTHY MATHEW KAKAMBAAPPELLANT

VERSUS

- i. TABORA MUNICIPAL COUNCIL1st RESPONDENT**
- ii. BARAKA STEPHEN MACHA..... 2NDRESPONDENT**
- iii. YASIN HASSAN3RD RESPONDENT**

JUDGMENT

Date: 8/9/2020-13 /11/2020

BAHATI, J:

This appeal arises from the decision of the trial tribunal in Land Application No.51/2017 (Waziri M.H.) Chairman was delivered on 10/9/2018. Before this Court, the appellant being dissatisfied with the decision of the District Land and Housing Tribunal for Tabora at Tabora appealed on the following grounds that:-

1. *That, the absence of any evidence proving that Yasin Hassan (the 3rd Respondent) has been in occupation and use of the disputed land for the said almost 15 years, the 3rd respondent being the one from whom the 2nd respondent derived the allegedly title over the disputed land, then the trial tribunal erred in law to invoke the doctrine of adverse possession to decide in favor of the 2nd Respondent.*
2. *That while the title deed of the appellant over the disputed land existed before (since 1983) as compared to that of the 2nd respondent which existed after (since 1987) and the same having not been revoked by any authority, then the trial tribunal erred in law and fact to declare the 2nd respondent to be the lawful owner of the disputed land instead of the appellant herein.*
3. *That the trial tribunal erred in law and fact to decide in favour of the second respondent in disregard of the appellant's cogent evidence on record which carries more weight as compared to that of the respondents.*

On the date when the appeal was called for mention both parties complied to have filed their written submissions. Following the Orders

of this Court, both parties dutifully complied and filed their respective written submissions.

In the course of disposing of this appeal, I shall first consider the written submissions by both parties and, having reviewed the record and judgment of the trial tribunal, proceed to determine the appeal. As regards the parties' submissions, the Appellant before his submission on the grounds of appeal at hand, briefly submitted that he had noted a pertinent, glaring, and apparent two illegalities which were committed by the trial tribunal in the cause of determining the Land Application No. 56/2016 to wit, one, the chairman did not require the assessors to give their opinion before composing the judgment of the tribunal and secondly, the assessor's opinion was not read to the parties before composing judgment by the chairman, the two above were contrary to Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal)Regulations,2002.

He further submitted that it is on record that defence case was closed on 16/8/2020 on page 44 of the typed proceedings, which was followed by the Order of the tribunal as;

“TRIBUNAL”

The respondent’s Case is hereby marked closed.

ORDER

Judgement on notice”.

Waziri, M,H

Chairman

16/08/2018 ”

The appellant further submitted that, it is apparent from the above tribunal order that when the defence was closed, there is no tribunal order requiring the tribunal assessors to write their opinion and there is no any order as to when the opinion (if any) of the assessors were to be read to the parties or when the same were read to the parties before the trial tribunal judgment could be composed. To support his arguments, he cited the case of **Edina Adam Kibona V Absolum Swebe (Sheli) Civil Appeal No. 286/2017 Court of Appeal of Tanzania at Mbeya (unreported)** where it held that; *“when the Chairman closed the case for defence , he did not require the assessors to give their opinion as required by the law. That was fatal irregularities and vitiated the proceedings.”*

The Court of Appeal went further to state on page 6 that ;

“We wish to recap at this stage that in trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of the 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 that opinion must be in record and must be read to parties before the judgment is composed.

To wind up his submission, basing on the case law with the scenario similar to what the trial tribunal herein violated and which at the end of the day nullified the proceedings and judgment of both courts, the appellant submitted that other grounds of appeal will remain to be an academic exercise.

In reply, the 1st and 2nd respondents in support of the memorandum of appeal against the decision of the trial tribunal in land Application No. 51/2016 Tabora District Land and Housing Tribunal supported that there were two illegalities which were committed by the trial tribunal in the cause of determining the Land Application No. 56/2016 that ;

“The chairman did not require the assessors to give their opinion before composing the judgment of the tribunal and that the

assessors' opinion was not read to the parties before composing judgment by the Chairman."

The respondent further supported that, it is the requirement of the law under section 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003.

"... The chairman shall, before making his judgment, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessors may give his opinion in Kiswahili".

The respondent added that despite the fact that on the judgment delivered on 10/9/2018 before the tribunal Chairman elaborated that before he reaches the finality he considered the opinion of the assessors namely Mama Aneth Nsimba and Mama Neema Ngwira who opined in favour of the second respondent to be the lawful owner of the suit land. There was no order provided that the opinion of the assessors was to be read to the parties and no order on the proceedings showing that the assessors wrote their opinion seen in the record of the proceedings to support what was stated in the said judgment.

Having considered the submissions from both parties, the issue before this court is whether the irregularities committed by the trial

tribunal in the cause of determining the Land Application No. 56/2016 adduced by both parties have merit.

It is a trite law that Section 23(2) of the Land Disputes Courts Act, Cap. 216 provides that,

“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 the judgment.”

The case of **Tubone Mwambeta v Mbeya City Council, Land Appeal No.25 of 2015 (Unreported)** where the Court observed the role and importance of assessors' to give their opinion was insisted thus;

“The role of assessors will be meaningful if they actively and effectively participate in the proceeding before giving their opinion at the conclusion of the trial and before judgment is delivered. Also, the duty to ensure assessors opinions are considered in judgment is imposed on the District Land Housing Tribunal under rule 19(2) of the Land Dispute Courts (The District Land And Housing Tribunal Regulation.2003)”

I have taken the trouble to peruse the records of the trial tribunal and noted that no opinion of the wise assessors has been recorded.

Despite the fact that on the judgment delivered on 10/9/2018 before Waziri. M.H, the tribunal Chairman elaborated that before he reaches the finality he considered the opinion of the assessors.

In view of the fact that the record does not show that the assessors' were required to give them, I fail to understand how and at what stage they found their way in the court record.

In my view, the trial chairman acted contrary to section 23 of the Land Disputes Courts Act, Cap. 216 which mandatorily requires assessors to give their opinion before the Chairman composes judgment. The law categorically provides that where the Chairman disagrees with the assessor's opinion he has to give reasons for so doing but not to ignore them. In the present case, the Chairman never complied with the provision of section 23 of the Land Disputes Courts, Cap. 216 and regulation 19(2) of GN. No.174/2003. Failure to adhere to the law makes the entire proceedings and decision a nullity. From that observation and findings, I need not dwell on the remaining grounds of appeal.

I thus invoke the power under section 43 (1)(b) of the Land Disputes Courts Act, Cap 216, and proceed to quash the proceedings of the trial tribunal and set aside the judgment and decree thereof. I

further order an expedited fresh hearing of the matter before another chairman.

Given the circumstances of the case, each party to bear its costs.

Order accordingly.


A. A. BAHATI

JUDGE

13/11/2020

Judgment delivered under my hand and seal of the court in chamber, this 13th day November, 2020 in the presence of Mr. Musa Kassimu learned counsel for the appellant and the respondents are absent.


A. A. BAHATI

JUDGE

13/11/2020

Right of appeal explained.


A. A. BAHATI

JUDGE

13/11/2020

