

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MBEYA
AT MBEYA**

**LAND APPEAL CASE NO 80 OF 2018
(From the District Land and Housing Tribunal for Mbeya at Mbeya
Application No. 102 of 2014)**

**THE REGISTERED TRUSTEE K.K.K.T
CHURCH MBUGANI CHUNYA.....APPELLANT
VERSUS
FEBE MWANAMPINA..... RESPONDENT**

JUDGMENT

06 & 12.03.2020

UTAMWA, J.

In this appeal the Registered Trustee of KKKT Church Mbugani Chunya (the appellant) challenges the decision of the District Land and Housing Tribunal (DLHT) for Mbeya at Mbeya. The appellant was represented by Mrs. Joyce Kasebwa (the learned advocate) whereas Febe Mwanampina (the respondent) was represented by Mr. Omary Ndamungu also a learned advocate under *Pro bono* basis.

The appellant's counsel preferred a total of four grounds of appeal. Later on, by the leave of the court preferred additional ground of appeal. Parties agreed and court ordered to dispose of the appeal by way of written submissions which was accordingly adhered to.

The appellant's counsel opted to argue the only additional ground of appeal. So she submitted that, the DLHT erred in both facts and law by not including opinions of assessors in the records before composing judgment (the impugned judgment) which contradicts the provisions of section 23(1) and (2) of the Land Disputes Courts Act Cap. 216 RE. 2002 and Regulation 19(2) of the Land Disputes Courts, Regulations 2003 (the Regulations). The said provisions of the law require the DLHT to be composed of a chairman and not less than two assessors, and the assessors are required to give their opinion before the chairman reaches the judgment.

So it was the contention of the appellant's counsel that, in the present impugned judgment and proceedings the trial DLHT did not conform to those requirements. She cited a number of decisions by the Court of Appeal of Tanzania including; **Abdallah bazamiye and Others v. Republic [1990] TLR 42, Tubone Mwambeta Vs. Mbeya City Council, Civil Appeal No. 287 of 2017 CAT at Mbeya (unreported) and Edina Adam Kibona Vs. Absolom Swebe (SHELI), Civil Appeal No. 286 of 2017 CAT at Mbeya (unreported).**

She thus prayed this court to allow appeal, quash the decisions set aside orders and the matter be remitted to DLHT for trial de novo with costs. As to costs it was her argument that, the appellant has incurred costs and the fact that, the respondent was represented on *pro bono* basis has no legal basis.

On the part of respondent's counsel conceded the appeal that, the matter should be remitted to DLHT for trial de novo, but he argued that, the appeal be allowed without cost because the respondent is very old and has limited income that is why was represented on *pro bono* basis and that, procedural irregularities was caused by the trial DLHT.

I have considered submissions by the parties, records of DLHT and the law. Indeed, I totally agree with position adopted by the parties. It is true that the whole proceedings and resulted decisions of the trial DLHT was a nullity due to the reasons correctly submitted by the appellant's counsel thereof above. These legal irregularities have been held to be incurable ones by the CAT in the two recent decisions in **Edina** and **Tubone** cases (SUPRA).

For that reason, I allow the appeal in its entirety. The proceedings of the DLHT are thus, nullified and quashed. Its judgment is accordingly set aside. Each part shall bear his own costs since irregularities which led this matter to an end were caused by neither party to the proceedings. If the parties shall wish, they may pursue their rights according to the law. It is so ordered.



J.H.K. UTAMWA

JUDGE

12/03/2020

DATE 12.03.2020

CORAM: Hon. Dr. J.H.K. Utamwa, J.

Appellant: Mr. Elly Mwaipopo (Chairman of Financial Council)

For the Appellant: Mr. James Kyando H/B for

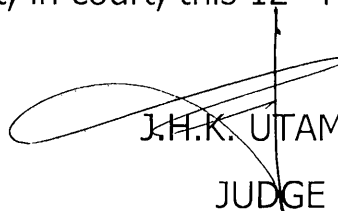
Mrs. Joyce Kasebwa (advocate) for appellant

Respondent:

For the Respondent: } Absent

B/C- Mr. Patrick Nundwe RMA.

Court: Judgment delivered in the presence of Mr. Elly Mwaipopo (Chairman of the Financial Committee of the Appellant) and Mr. James Kyando, learned counsel holding briefs for Mrs. Joyce Kasebwa, learned counsel for the appellant, in court, this 12th March 2020.


J.H.K. UTAMWA
JUDGE
12/03/2020