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

MISC. LAND APPEAL NO. 3 OF 2021

(Originating from Land Appeal No. 61/2019 in the District Land and Housing Tribunal for Dodoma at Dodoma)

AMOSI CHIUTE ..... APPELLANT

VERSUS

BODI YA WADHAMINI WA KANISA
LA WASABATO.....RESPONDENT

JUDGMENT

14/9/2021 & 22/11/2021

KAGOMBA, J

This appeal pertains to a protracted dispute over ownership of four (4) acres of land situated at Buigiri village within Chamwino District in Dodoma region (henceforth the "suit land"). The respondent claims that he was allocated the suit land by the village government in 1991 while the appellant claims that the suit land had for long time belonged to the Chiute family, to which he belongs.

The Buigiri Ward Tribunal, which heard the matter at the first instance, decided in favour of the respondent, a decision which was upheld, on appeal, by the District Land and Housing Tribunal for Dodoma at Dodoma

(henceforth "the Tribunal"). Still aggrieved by the decision of the Tribunal, the appellant is before this Court praying that the judgment and consequential orders of the Tribunal be declared void and he be declared the legal owner of the suit land.

The appellant's petition of appeal carries the following grounds: -

1. That, the Honourable Chairman of the Tribunal erred in both facts and law by misdirecting his mind to the evidence on record which was tendered by the appellant before the Buigiri Ward Tribunal which, if properly considered in its totality, would have resulted into a judgment in favour of the appellant and not the respondent.

2. That, the Honourable Chairman of the Tribunal erred in both facts and law by failing to appreciate the weight of evidence in deciding that the appellant herein is a trespasser while the evidence on record shows that the suit land has been in the hands of the appellant's family since 1971.

3. That, the Honourable Chairman of the Tribunal erred in both facts and law by holding that the respondent is the legal owner of the

suit land and that the appellant is a trespasser into it without directing his mind to the fact that the Buigiri Village Council allocated the suit land to the respondent illegally and without any notification to the appellant's family who are the legal owners.

On the date set for hearing of the appeal, AMOSI CHIUTE, the appellant, appeared in person while the respondent was represented by Francis Kesanta, learned Advocate. In addressing the court on the filed grounds of appeal, the appellant submitted that justice was not done by the Tribunal as his evidence was not considered while the evidence adduced for the respondent, which consisted of mere lies, was given weight.

The appellant further submitted that the purported allocation of the suit land to the respondent by the village government was not supported by minutes of the village council and that the respondent had no any evidence of ownership. He also submitted that the appellant's family disputed the acquisition of the suit land by the respondent since 1991 adding that the respondent's claim of enjoying undisturbed occupation of the suit land for over 12 years was untrue.

The appellant discredited the evidence adduced before the Ward Tribunal by some village government officials who supported the respondent's contention on land allocation. He labeled them as respondent's believers who supported the respondent not because of facts but faith.

For the respondent, Mr. Kesanta opposed the appeal. He submitted that there was no dispute that the respondent was allocated the suit land by the village government and started using it since 1991. He challenged the argument that the evidence to support that there was land allocation was made by the respondent's church members, saying that those who testified knew it for a fact that the respondent was allocated the suit land and some of them had their wedding rites conducted in that respondent's church.

Mr. Kessanta opposed the argument that the appellant's family had been on the suit land since 1991. He argued that under sections 16 and 14 of the Village Land Act, [Cap 114 R.E 2019] all the land allocated by village governments since 1978 up to the time of coming into force of the said Act,

in 2000, were deemed to be lawfully done irrespective of whether the village governments had observed the land allocation procedures or not.

He also argued that the suit land was left unattended for more than 18 years but upon the return of the appellant's family to the suit land they found the respondent's church already built and didn't take any steps to file a land dispute. He said that the appellant's inaction for such a long time was contrary to the requirement of paragraph 22, Part I of the Schedule to the Law of Limitation Act, [Cap 89 R.E 2019] that sets a time limit of 12 years to file a dispute.

On the claim that the suit land belonged to the appellant's family, Mr. Kesanta challenged the competency of the suit for lack of *locus standi* on part of the appellant to represent the family. He also cited contradictions in the appellant's evidence as well as lack of clarity as to how the appellant's family acquired the suit land. He referred the court to the case of **Emmanuel Abraham Nanyaro vs Peniel Ole Saitabu** [1987] T.L.R 47 calling for this court to reject such contradictory evidence.

In his rejoinder, the appellant vehemently objected the argument that he filed the dispute out of time. He argued that all the respondent's witnesses testified that there was a longstanding dispute which was reported to police and even to the local leadership. He also opposed the contention that the land was left vacant arguing that it was only his father who was away but the rest of the family members were present. He argued that the fact that on their return they found the respondent had already built the church was not a bar to the claim by the appellant's family, suggesting that the illegally built buildings can be demolished.

The appellant confessed that he was unaware of the law legalizing illegally allocated land. he said that all what he knew was that for land to be allocated, one had to apply for it and the village had to allocate it. He reiterated his prayer for the appeal to be allowed and the decision of the Tribunal to be quashed for illegality.

Having heard the submissions by both sides, and after a careful perusal of the proceedings of the Tribunal, the issue here is not whether the appeal has merit or not, rather whether the same is maintainable before this court

owing to the serious procedural irregularity observed in the Tribunal's proceedings. I shall be straight forward.

It is not shown anywhere in the entire proceedings of the Tribunal that the assessors were invited to give their opinion, in front of the parties. The law under section 23(1) and (2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] requires not only that the Chairman of a District Land and Housing Tribunal should sit with not less than two assessors for the Tribunal to be properly constituted, but also the assessors shall give out their opinion on the matter under adjudication. Sub-section (2) of section 23 is apt on this matter when it provides;

> *"(2) 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****". [Emphasis added].*

The above position of the law was amplified by the Court of Appeal (CAT) in its several decisions such as **Edna Adam Kibona v. Absolom Swebe (Sheli)** Civil Appeal No. 286 of 2017 and **Tubone Mwambeta v.**

Mbeya City Council, Civil Appeal No. 287 of 2017, both by CAT at Mbeya. In the latter decision the CAT held:

> *"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors.....they must actively and effectively participate in the proceedings so as to make meaningful their role of giving opinion before the judgement is composed".*

The above position of the law has been stated in various other decisions of this Court. See, for example, the case of **Merysiana Mathew v. Methew Tura & Another**, (Land Revision No. 7 of 2020) [2020] TZHC 2582 High Court at Musoma.

According to the proceedings of the Tribunal, the opinion of the assessors was not given to the parties before composition of the judgment as required by the law. Such an omission amounts to a serious irregularity which necessarily vitiates the proceedings as well as the judgment and decree of the Tribunal. The irregularity is serious because it goes to suggest that the Tribunal was not properly constituted. Also, the parties were denied their right to know the opinion of the assessors.

It is for the above stated reasons, I invoke revisionary powers of this court under section 43 of the Land Disputes Courts Act, [Cap 216 R.E 2019] to nullify the proceedings of the Tribunal, quash its judgment and set aside the resultant decree. I order that the case file be remitted to the Tribunal for a fresh hearing of the appeal before another Chairperson and a new set of assessors.

Since the cited irregularity was not caused by either of the parties herein, I make no order as to costs.

Dated at **Dodoma** this 22nd day of November, 2021.

ABDI S. KAGOMBA

JUDGE