

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND CASE APPEAL NO. 29 OF 2019

*(Arising from the District Land and Housing Tribunal for Iramba at
Kiomboi in Application No. 21 of 2012)*

TATU MPANDA.....APPELLANT

VERSUS

HELENA KAAWE MGANA.....RESPONDENT

JUDGMENT

Date of Last Order: 02/08/20201

Date of Judgment: 11/08/20201

Dr. A.J. Mambi, J.

This Judgment emanates from an appeal filled by the appellant challenging the decision of the District Land and Housing Tribunal for Iramba at Kiomboi in Application No. 21 of 2012. The records reveal that the District Land and Housing Tribunal made the



decision in favour of the respondent. This means that the respondent was declared the lawful owner of the land in dispute.

Aggrieved, the appellant filed her memorandum of appeal preferring four grounds as follows:

- 1. The District Land and Housing Tribunal erred in law and in fact in deciding that the Respondent is the lawful owner of the land in dispute without considering the instructions from the judgment of the High Court in Land Case Appeal No. 39 of 2013.*
- 2. That, the District Land and Housing Tribunal erred in law and in fact in deciding for the Respondent is the lawful owner while in the previous judgment in Application No. 26 of 2012 the same Chairman decided in favour of the Appellant herein.*
- 3. That, the District Land and Housing Tribunal erred in law and in fact in deciding that the Respondent is the lawful owner of the land in dispute while the case was not heard nor the Appellant herein did not file his written statement of defence.*

4. That, the District Land and Housing Tribunal erred in law and in fact in not considering the fact that, the Appellant is the lawful owner of the land in dispute.

During hearing of this appeal, the respondent was represented by the learned Counsel Mr. Paul Nyangarika while the appellant appeared under the service of the Learned Counsel Mr. Erik Kishari. In his submission, the appellant learned Counsel very briefly submitted that the tribunal Chairman failed to comply within the directives of this court made by Hon. Judge Sahel (as she there was). He argued that the chairman was ordered to re-write separate judgments but he ended up determining the matter afresh and changed his mind on the previous decision where the appellant was declared the owner of the disputed land.

In responses, the respondent through her advocate submitted that the appellant argument that the chairman failed to comply with the directives of this court has no merit. He argued that since this court nullified the previous judgment that consolidated three matters (Appeal No.29, 30 and 31 of 2015) then that judgment is not has no

legal validity. He argued that the Tribunal Chairman rightly composed new three separate judgments as directed by this court.

I have carefully gone through the grounds of appeal, submissions of both parties, and the records from the trial tribunal. It appears the appellant counsel consolidated all grounds of appeal into one point emanating from an order of this court. This means that he seems to have abandoned his other grounds of appeal which are almost similar. In this regard, the main issue to be determined is whether the trial Tribunal Chairman complied with an order of this court in Civil Appeal No.39 of 2013 that was made by Hon.Judge Sahel (as she then was) on 9/10/2015.

The records reveals that in land case No.26 of 2012 the Chairman wrongly consolidated three applications to form one judgment at the stage of judgment writing. It is on the records that the Tribunal Chairman conducted different proceedings for each application but having realized difficulties in dealing with assessors' opinion from different applications he decided to write one judgment for all applications. Having been dissatisfied by the decision of the DLHT, one Charles Magana filed an appeal to this court against Frank Pyuza, Tatu Mpanda and Emannule Clemnce in land case appeal

no 39 of 2013. This court in in land case No.26 of 2012 observed that it was wrong for the trial tribunal chairman to consolidate the three applications to form one judgment. I wish to court the quote the observation made earlier by this court as follows:

“I find that the consolidation the three applications after the conclusion of the hearing of evidence occasioned a miscarriage of justice in terms of section 45 of the Land Disputes Courts Act, Cap 261”.

Having observed such irregularities, the Hon. Judge made the following order and I quote:

“I proceed to quash and set aside the consolidated judgment and direct that the file be remitted to the trial chairman to rewrite judgment for each application.”

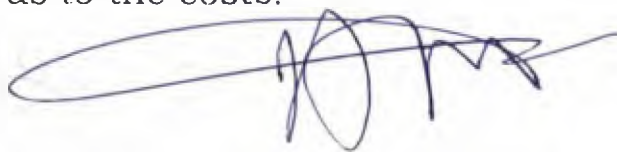
Reading between the lines on the above order, it is clear that the Hon. Judge ordered the tribunal chairman to re-write three separate judgments for each application.

The question is, did the tribunal chairman comply with the court order?. The answer in my view YES, since the records

from the trial tribunal are clear that the tribunal chairman did write separate Judgment for each application. The appellant in this court has also claimed that it was wrong for the Chairman to depart from his previous judgment. In my view, this claim has no merit, since the consolidated judgment was invalid and nullified by this court; the tribunal chairman was not bound to follow his previous non-existed judgment. As I observed it is clear that the Chairman complied with the order of this court.

In the circumstance and from the reasons stated above I have no reason to fault with the decision of the Trial tribunal rather than upholding its decision. In the premises this appeal is dismissed and the respondent is declared to be the lawful owner of the disputed land as made by the tribunal.

No orders as to the costs.

A handwritten signature in blue ink, consisting of a large loop followed by several vertical strokes and a horizontal line at the end.

Dr. A.J. MAMBI

JUDGE

11/08/2021

Judgment delivered this **11th** day of **August, 2021** in presence of both parties.



Dr. A.J. MAMBI

JUDGE

11/08/2021

Right of Appeal to the Court of Appeal fully explained.



Dr. A.J. MAMBI

JUDGE

11/08/2021