

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

LAND APPEAL NO. 6 OF 2021

(Arising from the Decision of District Land and Housing Tribunal of Kigoma in Land Appeal No. 75 of 2018 dated 3/2/2020 before F. Chinuku Chairperson)

STAFOD S/O KABOGO.....APPELLANT

VERSUS

ATHUMAN S/O MAURUTI MRISHO

as Administrator of Estate of **ZUBEDA MAURUTI MRISHO RESPONDENT**

J U D G M E N T

27th & 27th April, 2021

A. MATUMA, J.

The parties herein had started a dispute at Nyansha Ward Tribunal over ownership of Land. The Appellant won the suit thereat and the respondent became aggrieved hence an appeal to the District Land and Housing Tribunal for Kigoma.

The District Land and Housing Tribunal having heard the appeal which had comprised five grounds of appeal made its judgment four paged allowing the appeal with no orders as to costs declaring the Respondent as a lawful owner of the dispute land.

The appellant was not satisfied with the Judgment of the District Land and Housing Tribunal hence this appeal with five grounds whose main complaint was to the effect that the judgment of the District Land and Housing Tribunal was reached without consideration to the evidence adduced at the trial Ward Tribunal, and in contravention to the opinion of assessors without assigning any reason.

At the hearing of this appeal, the Appellant appeared in person unrepresented while the Respondent had the service of Mr. Silvester Damas Sogomba learned Advocate.

The appellant submitted generally complaining that the impugned judgment of the Appellate Tribunal was reached without considering the evidence on record.

Mr. Sogomba learned advocate at first wanted to safeguard the impugned judgment under regulation 20 (1) of the Land Disputes (District Land and Housing Tribunal) Regulations, G.N 174 of 2002 to the effect that the judgments of the tribunal are required to be short. But having been probed by the court, the learned advocate conceded that the impugned judgment lacked the necessary ingredients for a valid judgment. He therefore argued that the record be remitted back to the Appellate tribunal to re-hear the appeal afresh and compose a Valid Judgment.

I would strait away allow the appeal on the strength of the complaint that in reaching to her decision the learned chairperson of the District Land and Housing Tribunal did not consider the evidence on record as adduced at the trial tribunal.

This is because her judgment contravened the requirements of the provisions of section 35 (2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019 which requires the decision of the District Land and Housing Tribunal on appeal, to state clearly the reasons for the decision among other requirements;

*'The District Land and Housing Tribunal shall immediately after making the decision on appeal, record the decision **and the reasons thereof**'.*

In the instant matter the judgment of the District Land and Housing Tribunal is short of the requirements under section 35 (2) of Cap. 216 supra.

It bears the decision without any reasoning. As I have said area, the said judgment has four pages. In the first page, the learned chairperson reproduced the historical background of the dispute. In the second page, there is a reproduction of the grounds of appeal, on the third page there are explanations of the reply by the respondent thereat now the appellant

and reflection of the assessors' opinions. The last page contains the delivery of the judgment.

The finding of the Hon. Chairperson is on the third page that;

I have carefully considered the submission of both parties. Through the record of the Ward Tribunal both parties got a chance to be heard. It is the evidence on record that the respondent shifted from the suit land in 1989.

I find that the appellant's evidence was stronger than respondent's evidence; I therefore differ with the opinion of assessors and hereby set aside the decision of the Ward Tribunal.

The appellant is the lawful owner of the suit land.

This appeal is allowed with no orders as to costs'

It is clear from the herein above quoted findings that the decision does not bear the reasons thereof. It is not stated which evidence of the respondent was considered stronger than that of the appellant and how. It is not even known whether the appeal was allowed because of the stated evidence that the Appellant had shifted from the dispute land since 1989. If so was it that the Hon. Chairperson was satisfied that indeed the current appellant was the lawful owner of the Dispute Land prior to 1989, and lost such ownership by reason of long time absence on the dispute land? All these have no clear answers from the impugned judgment itself.

In the circumstances, the complaint that the evidence on record was not considered cannot be overruled as there is no analysis and determination of the same.

Even the cited regulation 20 supra by Mr. Sogomba learned advocate for the Respondent is very clear that the judgment of the District Land and Housing Tribunal whatever short it might be, it must contain; ***brief statement of facts, finding of the issues, the decision, and the reasons for the decision.*** Under the Civil Procedure Code, Cap. 33 R.E 2019 a valid judgment must contain a concise statement of the case, the points for determination, the decision thereon and reasons for such decision. That is the requirement of Order XX Rule 4 of the Civil Procedure Code supra, which is applicable in the District Land and Housing Tribunal as well.

In the case of ***Stanslaus Rugaba Kasusura and The Attorney General v. Phares Kabuye [1982] TLR 338*** it was held that the Judgment is fatally defective, if it leaves contested material issues of fact unresolved. It is not really a judgment because it decided nothing in so far as material facts are concerned.

In the instant matter there were five grounds of appeal which were in fact contested material issues for determination on appeal. The grounds

included issues of evidence, right to be heard, locus standi, and erroneous decision. None of them were determined nor there is any reason for rejection of any of them.

In the case of **Anurali Ismail v. Reginal 1 TLR 370**, which is reflected in a Bench Book for Judges in Tanzania, Published by the judiciary of Tanzania January, 2019 **Abernethy J**, had this observation on judgment writing;

*'A good judgment is clear, systematic, and straight forward. Every judgment should state the facts of the case, establishing each fact by reference to the particular evidence by which it is supported, and it **should give sufficiently and plainly the reasons which justify the finding.** It should state sufficient particulars **to enable the court of Appeal to know what facts are found and how.**'*

The impugned judgment before me is short of all those requirements and cannot be looked in as it is not a judgment at all. It is as good as the appeal by the respondent thereat was not determined in line to her complaints.

I therefore under the herein above observations, allow the appeal, quash the purported judgment of the District Land and Housing Tribunal and

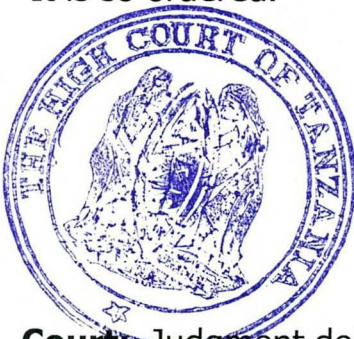


restore that of the trial Ward Tribunal which was purportedly set aside without any reasoning justifying the decision.

By considering that the respondent's appeal was not legally determined at the District Land and Housing Tribunal, I agree with the observation of Mr. Sogomba learned advocate that the appropriate remedy is to order such an appeal to be redetermined afresh. I therefore order that the records of the lower tribunals be remitted back to the District Land and Housing Tribunal for the Respondent's Appeal to be heard afresh before another chairman with competent jurisdiction and a new set of assessors.

The appeal allowed to that extent with no orders as to costs. Right of appeal is explained.

It is so ordered.




A. Matuma

Judge

27/04/2021

Court: Judgment delivered in chambers in the presence of the Appellant in person and Mr. Sogomba learned advocate for the Respondent.

Sgd: A. Matuma

Judge

27/04/2021