IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 43 OF 2019

(C/F Application No. 09 of 2017, in the District Land and Housing Tribunal of Simajiro)

ABRAHAM WAVI KINYONGA.....APPELLANT

VERSUS

KERETO NANGA NDARIVOI.....RESPONDENT

JUDGMENT

19/04/2021 & 11/06/2021

MZUNA, J.:

ABRAHAM, the appellant herein, has lodged this appeal against the decision of the Hon Chairman of Simanjiro District Land and Housing Tribunal which adjudged in favour of **KERETO,** the respondent in Application No. 09 of 2017.

Brief facts being that the respondent filed a suit against the appellant alleging that he had trespassed into his land measuring two acres situated at Shambarai Ward in Simanjiro. The appellant on the other hand also claimed to be the owner of the disputed land. The Tribunal, as above noted, in a two page judgment, adjudged in favour of the respondent hence this appeal.

When the matter came up for hearing the appellant was represented by Mr. John F. Materu, the learned counsel while the respondent was represented by Mr.

Charles Adiel, also the learned counsel. Hearing proceeded by way of written submissions.

The petition of appeal encompasses four grounds. During his submissions, the learned counsel for the appellant opted to drop ground No.1. I propose to deal with the third ground of appeal which I am sure can dispose of this appeal. It reads:-

> ***"That the trial tribunal erred in law by writing a judgment that is defective both in form and in substance."***

The appellant's main complaint is on the manner the judgment was written by the trial Chairman. In his submission the appellant submitted that the judgment written by the trial Chairman is defective both in form and substance by violating Regulation 20 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003 which provides for the contents of the Tribunal's judgment. The appellant went further to state that the judgment lacks findings on the issues and reasons for the decision.

The respondent on the other hand supported the judgment and stated that it contained all the contents as required by the law and further that even the issues framed by the Tribunal were answered through the evidence of PW1 and PW2 and evaluated by the Tribunal where it was of the finding that the respondent was the lawful owner of the disputed land.

In his rejoinder submission, the appellant's counsel insisted that the judgment of the trial tribunal is defective both in form and contents and it has violated the mandatory provision of Regulation 20 (1) of the Regulations. The counsel further cited the High Court case of **Shaban s/o Adamu Mwajulu & Another vs. The Republic,** Criminal Appeal No. 131 of 2019 (unreported).

In deciding this ground of appeal, I find it apportune to start by citing Regulation 20 (1) (a), (b), (c) & (d) of the Regulation which governs judgment writing in District Land and Housing Tribunal. It reads as follows:-

> *"20.-(1) The judgment of the Tribunal shall always be short writing in simple language and shall consist of;*
>
> *a) A brief statement of facts;*
> *b) Findings of the issues;*
> *c) A decision; and*
> ***d) Reason of the decision."*** (Underscoring mine).

Now the question is, was the impugned judgment a judgment within the provision of the law, above cited? Before I answer that question, I have noted that the above cited provision is somewhat similar to the provisions of section 312 (1) of the Criminal Procedure Act, Cap 20 RE 2019 (herein after referred to as CPA). It reads as follows on the content of judgment:-

> *"312. (1) Every judgment under the provisions of section 311 shall, except as otherwise expressly provided by this Act, be written by or reduced to*

writing under the personal direction and superintendence of the presiding judge or magistrate in the language of the court and ***shall contain the point or points for determination, the decision thereon and the reasons for the decision,*** *and shall be dated and signed by the presiding officer as of the date on which it is pronounced in open court."*

Section 312 (1) of the CPA was interpreted in the case of **Hamisi Rajabu Dibagula vs The Republic,** Criminal Appeal No. 53 of 2001, CAT (unreported) where the court cited with approval the case of **Luther Symphorian Nelson v. The Attorney General and Another,** Civil Appeal No. 24 of 1999 (unreported) on what a judgment should contain and observed at Page 21 that:-

"...A Judgment must convey some indication that the judge or magistrate has applied his mind to the evidence on record. Though it may be reduced to minimum, it must show that no material portion of the evidence laid before the court has been ignored. In ***Amirali Ismail v. Regina,*** *1 T.L.R. 370, Aberney, J., made some observation on the requirements of judgment. He said:*

> *"A good judgment is clear, systematic and straightforward. 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 a Court of Appeal to know what facts are found and how."*

In other words, a judgment apart from stating the facts of the case, it has to establish each fact in relation to the particular evidence. Above all, "*it should give*

sufficiently and plainly the reasons which justify the finding". In the impugned judgment, the Chairman remarked:-

> *"...On the trial date the issues were framed as follows;*
>
> *Who is the lawful owner of the suit land?*
>
> *To what relief(s) are parties entitled*
>
> *...The case was closed and the assessors gave their opinion that, the application be allowed with costs. I do agree with them.*
>
> ***I have heard the parties and the applicant has managed to prove his case on a balance of probability hence applicant is a legal owner of the suit land the respondent is permanently restraining from making an interference therein.*** *It is so ordered."*
> *(Underscoring mine).*

From the above quoted part of the judgment, it can be observed that the trial Chairman in the last paragraph of the judgment does not give the reasons for the decision. Actually, even the allegation that the disputed land was bought by the applicant (now respondent) in 1993 from a vendor namely LOMTIE LENGUTUKI did not feature in the evidence. The way he put it, it was a statement of fact which does not establish a claim unless and until there is a recorded evidence showing such fact which must be subject for cross examination. The so called judgment did not contain reasons for the decision.

It is clear that the trial Chairman arrived at the decision without giving reasons as required by Regulation 20 (1) (d) of the Regulation. The Court of Appeal of Tanzania in the case of **Tanga Cement Company Limited vs. Christopherson Company Limited,** Civil Appeal No. 77 of 2002 (Unreported) gave a clear elaboration on the contents of a judgment that;

> *"In the instant case the decision of 8.10.2001 does not contain a concise statement of the case, the points for determination and the reasons for the decision. In that respect we are of the view that, it is not a judgment."*

That said, such a judgment which lacks a very important element for it to stand as a judgment in the eyes of the law cannot be allowed to stand. This ground of appeal succeeds.

It is therefore correct to say, as in the last ground of appeal which was raised in the alternative by the appellant that the respondent had not adduced any evidence to support his alleged ownership of the disputed land. The Tribunal ought to have evaluated the respondent's case in line with that of the appellant who said at one time the dispute on the demarcation was settled by the street leader. That could have been a starting point if after such resolution there was further trespass by either party.

I am aware that this being the first appellate court it is entitled to re-evaluate the entire evidence before the trial tribunal on record by reading it together and

subjecting it to a critical scrutiny. It was so held in the case of **Philipo Joseph Lukonde vs. Faraji Ally Saidi,** Civil Appeal No. 74/2019 CAT at Dodoma (unreported) that;

> *"This being a first appeal, this Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusions."*

I cannot venture to that avenue for obvious reasons that even the recording of the evidence is wanting. It was not sufficiently shown under which title each was claiming ownership though it was established that the respondent is the uncle of the appellant's father. The only available remedy for a just decision of the case is to order a retrial before another Chairperson sitting with a new set of assessors.

That said, the entire proceedings and judgment of the trial Tribunal is hereby quashed and set aside with an order for immediate rehearing before another Chairperson and a new set of assessors.

Appeal allowed with no order for costs. Order accordingly.

M. G. MZUNA,
JUDGE.
11/06/2021