

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT TANGA

LAND CASE APPEAL No. 16 OF 2020

*(Arising from the District Land and Housing Tribunal for Lushoto at Lushoto in Land
Appeal No. 02 of 2019 & Originating from Kwekanga Ward Tribunal)*

MZIRAGEMBEI VILLAGE COUNCIL APPELLANT

Versus

DHAHABU BAU RESPONDENT

JUDGMENT

15th July 2021 & 15th July 2021

F. H. Mtulya, J.

On 12th June 2020 Mziragembei Village Council (the Appellant) instructed Mr. Subby John Nzowa, learned counsel, to draft and file **Land Case Appeal No. 16 of 2020** (the Appeal) in this court to protest the judgment of the **District Land and Housing Tribunal for Lushoto at Lushoto** (the Tribunal) in **Land Appeal No. 02 of 2019** (the Land Appeal) which originated from the decision of Kwekanga Ward Tribunal (the Ward Tribunal) in Lushoto District, Tanga Region.

Today morning when the appeal was scheduled for hearing, the parties invited learned minds to argue the appeal for them. The Appellant invited Mr. Shafii Rugine, learned Solicitor of Lushoto

District Council whereas Mr. Dhahabu Bau (the Respondent) called Mr. Switbert Rwegasira, learned counsel.

However, before the start of the proceedings, this court, *suo moto*, spotted two faults in the proceedings and decision of the Ward Tribunal, *viz*: first, the decision of the Ward Tribunal was not numbered in its title to reflect registration of land dispute in Civil Cases Register Book of the Ward Tribunal; and second, the decision of the Ward Tribunal heavily relied on the evidence of the Defence Witness Number Three, who is not depicted anywhere and his evidence cannot be found on record.

As part of cherishing the right to be heard enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002 & **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44, this court invited the dual learned minds to submit on the faults and status of the proceedings of the Ward Tribunal.

It was fortunate that after short consultations and discussions, the dual learned minds quickly changed their course to become officers of this court, as provided under section 66 of the **Advocates**

Act [Cap. 341 R.E. 2019], in support of the court and conceded that there are faults in the decision of the Ward Tribunal with regard to case number and defence witness number three. Concerning the remedies available in such proceedings, both learned minds agreed that the proceedings are nullity and prayed for trial *de novo*. This court sees no reason to deny their prayer.

It is the established practice of this court and Court of Appeal that where there are vivid irregularities in the proceedings of lower courts or tribunals, the courts of records cannot close their eyes and let the irregularities remain on records. In the precedent of **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, our superior court in judicial hierarchy stated that:

...the superior courts have the additional duty of ensuring proper application of the laws by the courts below... [the courts] have duty to address vivid illegality and that cannot justifiably close their eyes thereof.

In the present Appeal, there are vivid irregularities on the record of the Ward Tribunal which were also conceded by the learned minds representing the parties in this Appeal. As there are vivid irregularities in the proceedings and decision of the Ward Tribunal, any other decisions or order emanating from the decision of the Ward

Tribunal or Land Appeal No. 02 of 2019 which originated from the decision of the Ward Tribunal must also collapse.

Having said so, and noting the learned minds are in agreement that there were vivid faults in the proceedings and decision of the Ward Tribunal, I hereby quash the decision of the two (2) lower tribunals, namely Kwekanga Ward Tribunal and the District Land and Housing Tribunal for Lushoto at Lushoto in Land Appeal No. 02 of 2019 for want of fresh and proper record. I therefore order trial *de novo* in accordance to the law regulating land disputes. I also award no costs in this appeal as: first, the defects were detected by this court; second, learned minds changed their course to act as officers of the court; and in any case, the dispute has not been resolved to the finality to identify who is to bear the costs.

It is so ordered.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", with a long horizontal flourish extending to the right.

F.H. Mtulya

Judge

15.07.2021

This judgment is delivered under the seal of this court in chambers in the presence of Mr. Muhudi Ziadi Chamungwana, Mziragembei Village Executive Officer and Shafii Rugine, Lushoto District Solicitor and in the presence of the Respondent Mr. Dhahabu Bau and his learned counsel, Mr. Switbert Rwegasira.



A handwritten signature in blue ink, appearing to read "F.H. Mtulya", with a long horizontal stroke extending to the right.

F.H. Mtulya

Judge

15.07.2021