

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA

LAND APPEAL NO. 7 OF 2021

**THEOPISTA MNALE (The Administratrix
of Estate of the Late Mnale Mhika Misana) APPELLANT**

VERSUS

TULANALWO KASUKU RESPONDENT

***(Appeal from the decision of the District Land and Housing
Tribunal for Mara at Musoma in Land Application No. 47 of 2019)***

JUDGMENT

20th July and 20th August, 2021

KISANYA, J.:

Before the District Land and Housing Tribunal for Mara at Musoma, the appellant unsuccessfully sued the respondent on a claim for trespass onto the land of the late Mnale Mhika Misana. Thus, the respondent was declared to be the rightful owner of the suitland located at Nansimo Village within Bunda District Council.

Being aggrieved by the decision of the trial tribunal, the appellant step up in this Court with six grounds. For the reasons to be noticed later, I find it not appropriate to reproduce them.

During the hearing of this appeal, the appellant was represented by Mr. Ostack Mligo, learned advocate, while the respondent enjoyed the services of Mr. Edson Philipo, learned advocate.

In the course of submitting for and against the appeal, both learned counsel were at one that, the proceedings of the trial tribunal were a nullity for failure to indicate what happened when the trial tribunal visited at the locus in quo. Mr. Mligo referred the Court to the cases of **Nizar M.H vs Gulamali Fazal Janmohamed** (1980) TLR 29 and **Kumary Shadrack and Another vs Shadrack Kitangóni**, Misc. Land Appeal No. 97 of 2020, HCT at Musoma, Mr. Mligo submitted that the trial tribunal failed to comply with the procedures of visit at the locus in quo set out by the Court of Appeal including the hearing of the parties. Both counsel invited me to nullify the proceedings of the trial tribunal, quash and set aside the judgment and decree made thereon and make an order for retrial.

I have judiciously considered the petition of appeal and submission made by the learned counsel. The issue is whether the proceedings of the trial tribunal were vitiated for failure to comply with the guidelines governing the visit at the locus in quo. It is noteworthy that, there is no law which provide for the guidelines on the visit at the locus in quo. The existing guidelines were set by case law to ensure a fair trial during the visit at the locus in quo. This stance was taken in **Sikuzani Said Magambo and**

Another vs Mohamed Roble, Civil Appeal No. 197 of 2018 CAT – Dodoma,
the Court of Appeal had this to say on the issue under consideration:

*" ... we are mindful of the fact that there is no law which forcefully and mandatory requires the court or tribunal to conduct a visit at the locus in quo, as the same is done at the discretion of the court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during trial. **However, when the court or the tribunal decides to conduct such a visit, there are certain guidelines and procedures which should be observed to ensure fair trial.**" (Emphasize supplied).*

The Court of Appeal went on to cite with approval its decision in **Nizar M.H. vs. Gulamali Fazal Janmohamed** (supra), where some of the said guidelines and procedures were clearly articulated as follows:-

*"When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, **the court should attend with the parties and their advocates, if any, and with much each witness as may have to testify in that particular matter.. When the court re-assembles in the court room, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand, or relate to the evidence***

in court given by witnesses. We trust that this procedure will be adopted by the courts in future [Emphasis added]."

It is on record of this case that, upon closure of the defence counsel, Mr. Mligo who appeared for the appellant (the then applicant) moved the trial tribunal to visit at the locus in quo. The trial tribunal ordered that the visit at the *locus in quo* would be conducted on 25/09/2020. It was then rescheduled to 19/10/2020. However, the above guidelines and procedure on the visit at the locus were not complied. This is what transpired on 19/10/2020:

"19/10/2020

Coram: Kitungulu, E – Chairman

T/Ass: Mr. Swagarya & Babere

Applicant – Present

Respondent – Present

Clerk: Win

Court: *We visited the dispute land and the case came for another date for opinion of assessors.*

Order: *Opinion on 05/11/2020*

*Kitungulu, E.
Chairman
19/10/2020"*

It was not sufficient for the trial tribunal to record that a visit had been conducted. This Court was expected to see whether the witnesses were called or recalled to adduce their evidence; findings gathered from the said

visit; and whether upon reassembling in the trial tribunal room, parties were heard or asked to comment on the said findings. However, the assessors and the trial chairperson considered the evidence gathered at the locus in quo. This is reflected at page 4 of the judgment where the learned Chairperson held:

"On the other hand, I find the story of the respondent more coherent and trustworthy, that the respondent has been occupying the suitland for all time long (the respondent is 98 years old). And even when we visited the suitland we found the respondent in actual possession of the Suitland. There is no any trace of occupation of the suitland by the applicant or the applicant's family as the case may be."

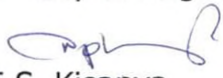
It is my considered finding that the above decision is not supported by the evidence on record because the proceedings on the visit to the locus in quo is wanting. As rightly held by the counsel for the parties, the defect or irregularity on the proceedings on the visit at the locus in quo vitiated the proceedings before the trial tribunal and caused miscarriage of justice. This ground is sufficient to dispose of the appeal. That is the reason for not reproducing and discussing the other grounds of appeal

In the circumstances, the proceedings of the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 48 of 2020 are hereby nullified and the judgment and decree arising thereto quashed and set aside. The case file is remitted to the trial tribunal for rehearing before another

chairperson and new set of assessors. I make no order as to costs as the parties are not to be blamed for the said anomaly. It is so ordered.

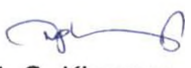
DATED at MUSOMA this 20th day of August, 2021.




E.S. Kisanya
JUDGE

Court: Judgment delivered this 20th day of August, 2021 in presence of the Mr. Noah Mwakisesile, learned advocate for the appellant and in the absence of the respondent. B/C Kelvin present.




E. S. Kisanya
JUDGE
20/08/2021