

“ORIGINAL”

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF DODOMA)
AT DODOMA**

LAND APPEAL NO 50 OF 2018

(Originating from the Decision of the Land and Housing Tribunal for Singida at Singida
in Land Application No. 29 of 2015)

FAUSTIN ALBERT NGOI

(Administrator of the estate

Of the late Albert Ngoi Mughwai.....**APPELLANT**

VERSUS

HUSSEIN JUMA REHANI

MARIAM ISMAIL**RESPONDENTS**

13 & 16/8/2021

JUDGMENT

KAGOMBA, J

The Appellant, FAUSTIN ALBEERT NGOI who is the Administrator of the estate of the late Albert Ngoi Mughwai, by a Memorandum of Appeal filed on 4/10/2018 appealed to this Court against the whole of judgement and decree of the District Land and Housing Tribunal of Singida District at Singida (hereinafter “ Singida DLHT”) delivered on 20/8/2018 by Hon. E.F. Sululu – Chairman, which declared the 1st respondent as the lawful owner of

suit plot No. 104 Block “C” Ikungi, Singida region thereby aggrieving the appellant.

Briefly the appellant applied to the Singida DLHT for declaratory order that the suit premise be declared a lawful property of his late father Mr. Albert Ngoi Mughwai and the 1st respondent be declared a trespasser. He further prayed that the 1st respondent be ordered to demolish her grocery and vacate the suit plot while other respondent be ordered to pay rent from August, 2014 to the Appellant up to the date of final disposition of the suit in Singida DLHT as well as costs and other reliefs as the Singida DLHT would deem just to grant.

Upon hearing, the Singida DLHT found that the appellant’s father the late Albert Ngoi Mughwai was allocated the suit plot since 31/07/1984 but breached development conditions in the right of occupancy. It was also found that it was the 1st respondent’s father who developed the land while the appellant’s father acquiesced, hence the appellant could no longer claim ownership. The Singida DLHT ordered that the 1st respondent be issued with a letter of offer and that the letter of offer which was issued in the name of the appellant’s father be nullified. The Singida DLHT also ordered that the appellant be allocated an alternative plot if he still needed to be allocated a plot and that he should also be refunded Tshs. 127,400/= paid by him as arrears of land rents from 1976 to 2015. Other reliefs sought were denied for having no merit. This is the background which left the appellant aggrieved and decided to file this appeal in pursuit of his justice.

The memorandum of Appeal contained seven grounds which I shall neither reproduce nor discuss for the reason which I shall state herein shortly.

During the hearing of the Appeal, the appellant used the services of Mr. Thomas Ligola, learned Advocate while the respondents used the services of Mr. Cheapson Kidumage, learned advocate.

At the very beginning of hearing of the appeal, Mr. Ligola, the Advocate for the appellant informed the court that after his further perusal of the judgment and proceedings of the Singida DLHT he found that there were legal issues in the decision of the tribunal which needed to be raised and addressed by the court. He thus prayed under Order XXXIX Rule 2 of the Civil Procedure Code, Cap 33 R.E 2019 to add one ground of appeal if the respondent would not object. There was no objection from the learned Advocate Kidumage, for the respondent and the Court granted leave for the additional ground Number 8 to be added as follows:

"8. The District Land and Housing Tribunal Chairman for Singida District erred in law for not including the opinion of assessors in the proceedings of the case".

While giving a no-objection to the addition of the above ground of appeal, the learned advocate Kidumage submitted that the ground was based on issue of law and as such it could be raised at any stage of the

hearing of the case since it was seeking to establish if the decision of the Singida DLHT was lawful. He further submitted that since the ground was capable of disposing of the Appeal if proved, it was his recommendation that the same be argued first in the interest of justice. Thus the court graciously allowed the advocate for the appellant to start his submissions by arguing the last and newly introduced ground of appeal.

Submitting on the last ground of appeal, which is ground No. 8, Mr. Ligola for the Appellant argued that **section 23(1) of the Land Disputes Courts Act, Cap 216 RE 2019** states clearly that District Land and Housing Tribunal shall be composed of the Chairman and two assessors. He further submitted that section 23(2) of the same Act required the Chairman of the Tribunal to invite assessors to give their written opinions before issuing his judgement. He argued that even **Regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunals) Regulations, 2013** emphasized that the Chairman has to invite assessors to give their opinions in writing before judgment, a legal requirement which was not observed by the Chairman of Singida DLHT. To cement his argument Mr. Ligola referred to the case of **Adam Kibona V. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 at page 5, 6 and 7 where the court emphasized that section 23(2) of the **Land Disputes Courts Act, Cap 216 RE 2019** and regulation 19(2) of **the Land Disputes Courts (District Land and Housing Tribunals) Regulations, 2013** should be observed by tribunals. In this case, he submitted, the court of appeal stated:

"Opinions of assessors must be reflected in the proceedings and then acknowledged in judgment".

The Advocate further submitted that on page 4 of the above cited Judgement the court held that opinion of the assessors must be read in court and that such an omission is a serious irregularity.

Mr. Ligola further submitted that in the case at hand, the defence closed its case on 11/5/2018 and the order was made by the tribunal that judgement would be made on 12/7/2018 but was actually issued on 20/8/2018 where on page 8 of the same the Chairman of the Singida DLHT said he has considered assessors opinions but there is nowhere in the proceedings of the case assessors' opinions were recorded. He submitted further that there is no date in the proceedings which was set for reading of the opinions of the assessors and concluded that the Chairman erred by not recording the opinions of the assessors in the proceedings and by not reading the same before the parties. He said that such an omission is against the legal provisions cited herein above and it is also against the cited decision of the Court of Appeal which requires that the opinions be recorded in the proceedings and be acknowledged in the judgment.

The learned advocate Ligola submitted that non-recording of assessors' opinions was a serious irregularity that vitiates all proceedings. He prayed the court to quash the decision of the Singida DLHT and to order trial de novo so that requirements of the law can be considered.

In reply to the above submission, Mr. Kidumage, the learned advocate for the respondent conceded to the entire submission by his learned brother Mr. Ligola. Mr. Kidumage prayed the court to use its powers under section 43(1)(b) of the **Land Disputes Courts Act Cap 216 R.E 216** to quash the proceedings and judgement of the Singida DLHT or to order trial de novo before another Chairman and members by observing requirement of the law. Mr. Kidumage prayed that with the submissions made in court, there was no reasons to argue the remaining grounds of appeal. He concluded by praying that since the error in the judgement was not occasioned by either party, the court be pleased to each party to bear his own costs.

In his rejoinder, Mr. Ligola for the appellant reiterated his submission in chief and joined hands with the respondent's advocate not to argue the remaining grounds of appeal as well as to pray the court to order each party to bear his own costs.

I should state in the outset that having gone through the relevant laws, records of the courts and submissions of the parties through their advocates, I am of the view that the newly added ground number 8 is enough to dispose of the appeal. It is for this reason the Court will neither reproduce nor discuss the first seven grounds of appeal.

From the parties' submissions on ground number 8 of the appeal, it is clear that the Chairman of the Singida DLHT erred in law for not including the opinion of assessors in the proceedings of the case. This Court and the

Court of Appeal has in numerous decisions emphasized the need for land tribunals to observe the requirements of section 23 of the Land Disputes Courts Act, Cap 216 RE 2019 and regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunals) Regulations 2013 when determining land disputes. The cited case of **Adam Kibona V. Absolom Swebe (Sheli), (supra)** is but one of many such decisions on recording and reading of assessors' opinions. It should also be emphasized here that it is not enough for the Chairman of the District Land and Housing Tribunal to state in his judgment that he has considered the opinion of assessors. Such consideration must be manifested in the proceedings as well as judgement and must be actually read before the parties in court before pronouncement of the judgement. Such is the requirement of the law.

In the case of **Tubone Mwambeta V Mbeya City Council**, Civil Appeal No. 287 of 2017, the Court of Appeal, *inter alia*, observed the following with regards to opinion of the assessors:

“Such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict”.

I should re-emphasize that it is about time land tribunals and courts alike should put a resolve to fully observe the legal procedures and requirements for working with assessors. Such a resolve will not only ensure

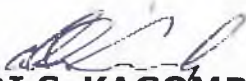
justice is rendered according to the law, but also save precious time of the parties and the judiciary in dealing with avoidable appeals, like this one.

On the strength of authorities cited above, I am satisfied that the Chairman of Singida DLHT erred in law for failure to include opinion of the assessors in the proceedings of the case. Such an irregularity amounts to a fundamental procedural error that necessarily vitiates proceedings and entire judgement of the Tribunal. It is my view that the observed irregularity is such a fatal one that it suffices to dispose of the appeal. Thus as submitted by the learned advocates in this case, I find that it is not necessary to proceed discussing the remaining seven grounds of the appeal.

In final analysis, I hereby nullify the entire proceedings of the DLHT and quash the judgement and subsequent orders thereto. As it was also prayed by the Appellant in his amended petition of appeal, I hereby order that the suit be tried afresh by the Land and Housing Tribunal for Singida observing requirements of the law. As such the appeal is allowed. Each party to bear his own costs.

It is ordered accordingly.

Dated this 16th day of August, 2021


ABDI S. KAGOMBA

JUDGE

16/8/2021

“ORIGINAL”

Judgement delivered today the 16th day of August, 2021 before Advocate Thomas Ligola for the Appellant who was holding brief of advocate Kidumage for the Respondent and in the presence of R.M.A R.A. Mahmoud.




ABDI S. KAGOMBA

JUDGE

16/8/2021