

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE MOSHI DISTRICT REGISTRY**

AT MOSHI

LAND APPEAL NO. 4 OF 2021

*(Originating from District Land and Housing Tribunal of Moshi at Moshi
in Application No. 296 of 2018)*

ADOLF JACKSON MBARARIA APPELLANT

VERSUS

ALLEN DANI RESPONDENT

JUDGMENT

MUTUNGI .J.

The appellant Adolf Jackson Mbararia, challenges the judgment and decree of the District Land and Housing Tribunal for Moshi at Moshi (the trial tribunal) in Application No. 296 of 2018 entered in favour of Allen Dani (the respondent) in the instant appeal.

The dispute is on the house situate at Mandaka Mnono Msaranga Area within Moshi Municipality (the suit property) which the respondent claimed to have bought vide an auction conducted by Moshi Auction Mart & Court Brokers dated 16th June, 1990, ordered by the Resident Magistrate

Court at Moshi in Civil Case No. 70 of 1988. The appellant herein claimed, he was aware that his father had a land dispute with one Festo Gerson Ngowi, but he won the case and he was declared the lawful owner. He also alleged that in 1982 his father distributed his land to his children and he was given the suit land measuring $\frac{1}{2}$ acre with the suit property therein. He further alleged he was not part of Civil Case No. 70 of 1988 which involved his father and Festo Gerson Ngowi. Surprisingly during execution the Court attached his property. At the end of the trial the trial tribunal declared the respondent the lawful owner of the suit land. Aggrieved by the decision, the appellant has appealed to this court on the following grounds: -

- 1. That, the trial chairman erred in law and fact in failing to evaluate and analyse the evidence adduced by parties thus reaching at an erroneous and unjust decision.*
- 2. That, the trial tribunal's judgment is bad in law as it does not meet the standards of a judgment provided for by the law.*
- 3. That, the trial chairman erred in law and fact for failure to address and resolved the issues framed at the commencement of the matter.*

4. *That, the judgment of the trial Tribunal was against the weight of the evidence as a whole.*
5. *That, the trial chairman erred in law and fact for holding and finding that, the appellant ought to challenge the sale by raising complaints at the Resident Magistrates Court which ordered the public auction, while in fact the appellant was not party in the said matter.*
6. *That, the trial chairman erred in law and fact for holding and finding that the respondent is the lawful owner of the suit land, while the said suit land was not properly identified as required by law.*
7. *That, the trial chairman erred in law and fact for accepting the representative of the respondent herein while in fact the respondent's whereabouts is known.*

The matter was heard by way of written submissions. The appellant was represented by Mussa .K. Mziray while the respondent was represented by Counsel Joseph Peter respectful. I commend them for filing their submission timely.

Mr. Mziray submitting on the 1st and 4th grounds stated, the evidence adduced before the trial tribunal regarding ownership of the land in dispute was neither evaluated nor analyzed as a whole by the trial chairman. He argued that,

exhibit P2 (notice issued by Moshi Auctioneers Court Broker) which was tendered by PW1, was never established in either way how it came in the possession of the respondent for his attorney to tender it before the trial tribunal.

The learned advocate further submitted, the trial chairman never evaluated and analyzed the evidence of appellant and his witnesses as he only stated all the defence witnesses supported the suit land located at Mandaka Mnono Village belonged to the respondent. This is clear that the appellant's witnesses were not evaluated and analyzed as required by law hence renders the decision so reached null and void.

Submitting on the 2nd and 3rd grounds Mr. Mussa averred, the judgment composed by the trial tribunal does not meet the standard of judgments as provided for in **Regulation 20(1) (a) (b) (c) and (d) of the Land Disputes Courts (The District Land and Housing Tribunal Regulations) G.N 174 of 2003**. He argued the provision requires the judgment to consist of a brief statement of fact, findings on issues, a decision and reasons for decision. However, during hearing the trial tribunal framed issues but they were not discussed in the judgment, failure of which renders the whole judgment

devoid of merit as it contravenes the mandatory requirement of the law in addressing and resolving the issues.

As to the 5th ground, the learned counsel averred, at the Resident Magistrates Court of Moshi parties to the dispute were Festo Ngowi and Jackson Mbararia's father, hence was not aware of what transpired in that proceeding. He had been in occupation of the suit land undisturbed for over 35 years before institution of the dispute in 2018. Further that, if the respondent truly purchased the disputed house at the public auction back in the year 1990, he would have claimed for the same then. Thus, allegations that he ought to have challenged the sale is misconceived once it was not in his knowledge.

Regarding the 6th ground of appeal, Mr. Mziray submitted, the land in dispute was not properly identified by the respondent herein. He argued, there is no boundary stated by respondent herein, something which renders the identification of the suit house difficult considering the disputed land is unsurveyed. He cited **Order 7 Rule 3 of Civil Procedure Code, Cap 33 R.E. 2019** in support thereof. Stressing on the same point he cited authority in the case of **Daniel Dagala Kanuda V Masaka Ibeho and Others, Land**

Appeal No. 26 of 2015 which highlighted on specification of boundaries and/or permanent features surrounding the land at issue if the same is unsurveyed land.

Lastly, he challenged the respondent's representation. The Power Of Attorney presented before the trial tribunal bears a different signature (the respondent as Donor of the Power of Attorney) to that which appears in the application and affidavit both signed by the said Allen Dani. Dionson Festo Ngowi who represented him (respondent's brother) raised a doubt as to whether he really is related to him.

In reply, Mr. Peter argued, the respondent bought the suit land through an auction in 1990 and the said auction was conducted by the Court Broker. He purchased the said suit property as a bonafide purchaser and since that day, he had been occupying the land up to 2018 when the appellant trespassed thereto. The respondent had knowledge of the notice issued by the court broker (Exhibit "P2") upon information of the auction made through a public announcement.

Mr. Peter further submitted as per Regulation 20 (1) of G.N. 174/2003, the judgment of the trial Tribunal was short and written in simple language, hence met the standard required

by the law. More so all the four issues raised were adequately addressed by the chairman according to the evidence adduced before him. It is upon such evidence that he considered the weight of each side and was satisfied, the respondent herein bought the land through an Auction conducted by Moshi Actionmart Broker hence he is a lawful owner.

The learned counsel also argued, the appellant had room to institute objection proceedings as provided for by **Order XXI Rule 57 of the Civil Procedure Code**. The auction itself was advertised and the appellant ought to have exercised his rights if any thereafter.

Lastly, Mr. Peter argued, the location of the suit property was thoroughly stated by the witnesses during trial and the same appears both in their respective submissions. These pointed to the same place and location, hence according to section 45 of the Land Disputes Courts Act, such omission shouldn't reverse or alter the trial tribunal's decision. He finally prayed the appeal be dismissed with cost for lack of merit.

In his brief rejoinder, the appellant reiterated his earlier submission and insisted the appeal be allowed.

I have going through both parties' submissions and trial courts' proceedings and judgment and from the grounds of appeal raised, I opt to first deliberate on 2nd 3rd and 4th grounds jointly, concerning the composition of the judgment. **Regulation 20(1) (a) (b) (c) and (d) of the Land Disputes Courts, Order XX Rule 4 of the Civil Procedure Code** provides the ingredients upon which a valid judgment should be premised.

"A judgment shall contain a concise statement of the case, the points for determination the decision thereon and the reasons for such decision"

This position has been emphasized in a number of the Court of Appeal cases including the case of **Lutter Symporian .V. Attorney General and Ibrahim Said Msabaha, Civil Appeal No. 24 of 1999, CAT (unreported)** where the Court held: -

"A judgment must convey some indication that a judge or magistrate has applied his mind to the evidence on the record. Though it may be reduced to a minimum, it must show that no material portion of the evidence laid before the Court has been ignored"

Perusing through the judgment of the tribunal dated 04/12/2020, the same lacks the mentioned required ingredients. The evidence of parties were never evaluated and analyzed. It contains mentioned issues that were never dealt with and neither was the evidence of the parties adduced before the trial tribunal briefly stated. The crucial argument on who had been living in the suit property, which was tabled as issue No. 3 was never analyzed. Surprising the tribunal from the blues came up with the conclusion without showing how the tribunal had arrived at such decision as emphatically provided for in the case of **Tanzania Breweries Limited .V. Anthony Nyingi (2016) TSLR 99 (CAT)** that: -

"In principle, if a court of law decides to accept or reject a party's argument, it must demonstrate that it has considered the same and set out the reasons for rejected or accepting it. Otherwise the decision becomes an arbitrary one"

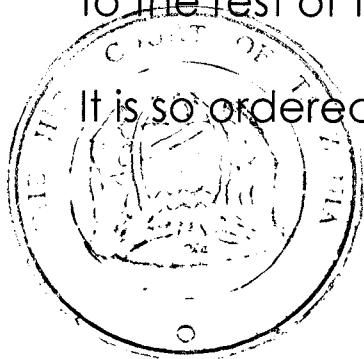
Considering the foregoing analysis it is crystal clear, the trial chairman only accepted the argument that the respondent was the lawful owner without applying his mind to the evidence in his judgment which is erroneous.

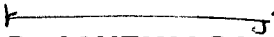
In the case **of Kashaga .V. Ernest Kahoya (1976) LRT No.10**, it was held that: -

"The proper thing for the appellate court to do where it is satisfied that in the case before it, there was failure by the trial court to try issues framed in the suit, is to remit the case to the trial magistrate and direct him to write a proper judgment which decides all the questions of facts arising from the issues framed"


Guided by the above authority, I therefore order the case file be remitted back to the trial tribunal for composition of a proper judgment and the trial chairman should apply his mind to the evidence adduced which will decide all questions of facts arising from the framed issues. Given the outcome of the three grounds of appeal, I need not venture to the rest of the grounds and I make no orders for cost.

It is so ordered.

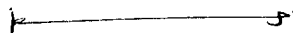



B. R. MUTUNGI
JUDGE
31/08/2021

Judgment read this day of 31/8/2021 in presence of the Appellant and Mr. Emmanuel Karia holding Mr. Mussa Mziray's brief for the Appellant.


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31/8/2021

RIGHT OF APPEAL EXPLAINED.


B. R. MUTUNGI
JUDGE
31/8/2021