

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 05 2018**

**ATHUMAN MUSSA MSILWA ----- APPELLANT**

*VERSUS*

**ISSA HEMED ZAHORO -----1<sup>ST</sup> RESPONDENT**

**ABDALLAH HEMED ZAHORO ----- 2<sup>ND</sup> RESPONDENT**

**HUSSEIN OMARY ----- 3<sup>RD</sup> RESPONDENT**

**HAMISI SUNGU ----- 4<sup>TH</sup> RESPONDENT**

**ALLY NAMAKATE ----- 5<sup>TH</sup> RESPONDENT**

**MARIAM ----- 6<sup>TH</sup> RESPONDENT**

*Date of last Order: 24/07/2019*

*Date of Judgment: 13/08/2021*

**J U D G M E N T**

**MGONYA, J.**

Appellant herein **ATHUMANI MUSSA MSILWA** unsatisfied by the District Land and Housing Tribunal for Temeke decision in **Land Application No. 205 of 2013** delivered on **26<sup>th</sup> day of January, 2018** appealed to this court. In the Memorandum of Appeal, Appellant presented eight grounds of appeal as herein below:

- 1. That the Tribunal erred in law and fact by holding that the Appellant failed to prove his case to the required standard while the case was proved to the required standard in Civil Cases.**
- 2. That, the trial Tribunal judgment contravenes Regulation 20(1) of G.N 174 of 2003.**
- 3. That the Tribunal erred in law and fact by concurring with the Assessor's opinion which based on oral testimony of DW 5 while the said Assessor was absent while the said witness was testifying.**
- 4. That the Tribunal erred in law and fact by holding that the Appellant failed to establish the dimension and size of the disputed area and the land mark contrary to the evidence on the Tribunal record.**
- 5. That, the Tribunal erred in law and fact by failing to properly consider, evaluate and analyse the evidence on record, as a result it reached to an erroneous decision.**
- 6. That, the Tribunal erred in law and fact by failing to determine the remained issues without stating the reasons for such omission.**
- 7. The Tribunal erred in law and fact by deciding the case basing on the oral testimony of DW 5.**

**8. The Tribunal erred in law and fact by failing to determine ownership of the disputed Land owned by each Respondent.**

In the event therefore, Appellants prayed for the following orders:

- i. That this appeal be allowed with costs;***
- ii. That the Decision of Temeke District Land and Housing Tribunal be quashed and set aside.***
- iii. The Appellant be declared the lawful owner of the disputed area; and***
- iv. The Respondents be ordered to vacate the disputed area and their structures be demolished forthwith.***

The Respondents were duly served with the Memorandum of Appeal. On hearing date, Mr. Mgare learned Advocate for the Appellant prayed that this matter be heard by way of written submissions of which Counsel for the Respondents did not object. Subsequently, I accordingly granted the prayer. The order to that effect was adhered accordingly, hence this Judgment.

In the cause of determining this Appeal, I had an opportunity of going through the records of the trial court, being the Land and Housing Tribunal and parties' respective submissions for and against the Appeal.

However I have chosen not to reproduce parties' respective submissions and instead, I will straightly determine the Appeal at hand as hereunder.

The following is the determination of the grounds of appeal as paraded before this Court by the Appellant, save for the **1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> grounds** of appeal which are hereby consolidated on the reason that they appear to be identical. These grounds are all contesting on failure of the Tribunal to consider evidence adduced before the Court by the Appellant herein with regards to ownership of the disputed land.

It is from the records that the Appellant is overwhelmed by the decision of the District Land and Housing Tribunal for not deciding in his favour despite the evidence that was adduced by him, his witnesses and the exhibits tendered before the Tribunal. The Appellant is confined to the evidence adduced where he alleges that his father owned a piece of land with the size of **7 acres**. The Appellant tendered exhibits that proved the ownership of the land to his father. The Appellant knocked the doors of the Tribunal as an administrator seeking for reclamation of the land since the Respondents had trespassed.

The Tribunal in its decision has shown that it is not disputed that the Appellant's father owned **7 acres** of land and yet again the same Tribunal decided against the Appellant. It was the Appellant's emphasis that he had proved his case in accordance to the provisions of **section 110 (1) and (2) of the Evidence Act Cap. 6 of 2019**. The records also show that the Appellant was still in confusion of how the Tribunal could not rule in his favour

together with the evidence of **DW 5** in place who admitted that the Appellant's father owned the **7 acres** of land and how he claimed the said pieces of land.

On the other hand, the Respondents are of a different opinion regarding the evidence of the Appellant to have been proved by the standards of the **Evidence Act** under **section 110 (1) and (2)**. The same informed this Court that the application of the Evidence Act as countless times emphasized by the Appellant to have complied with in proving his case at the Tribunal is contrary to the law since such law does not apply to the Tribunal.

It is trite law that the District Land and Housing Tribunal is governed by two Laws; that is the **Land Disputes Settlement Act Cap, 216** and the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2002** in the business of the Tribunal. However, it is not only these two laws that governed the proceedings of the Tribunal; rather that at times other laws are applicable which includes the Evidence Act. The Respondent's claim that **the Evidence Act Cap. 6 of 2019** is not applicable in trial Court is a **misconception**. The Evidence Act is not applicable only in the limitations of the provisions of **regulation 10** of the **Tribunal's Regulation** in regards to documents. It is where the Tribunal is provided leniency from the strictness of the provisions of the **Evidence Act**. It should also be

noted that the Evidence Act is only restricted in the manner stated above and not otherwise. Moreover, it is still the Evidence Act that requires a party to prove their case on the balance of probabilities in Civil cases in line with the principle whoever alleges must prove.

However, the evidence and exhibits in records show that it is the Appellants father that owned **7 acres**. But the evidence does not direct or show that the **7 acres** are part of the land that is resided by the Respondents. The Appellant was shouldered with the duty to prove to the Tribunal that the disputed land which he alleges the Respondent to be trespassing forms part and parcel of the **7 acres** he claims that belonged to his father.

I am of the firm view that the Appellant was required to approach the Tribunal claiming a land that he specifically knew the boundaries and was at a state to locate the boundaries. This would have been proof before the Tribunal that the land the Respondents reside is in a part of his father's "**7 acres**". The **1<sup>st</sup>** to **4<sup>th</sup>** Respondent all testified on how they came into possession of the pieces of land that they each claim to own. All of them tendered the Sale Agreements to prove their ownership. The Respondents managed to summon the witnesses that witnessed the Respondents when acquiring their land through Sale Agreements of which the same were tendered before the Tribunal. Failure of the Appellant to have located the boundaries of the land he claims to be his father's property had the Tribunals hands tied

to have decided in his favour. **It is from the analysis above that these grounds of appeal lack merits.**

On the **2<sup>nd</sup> ground** of appeal the Appellant attacks the decision of the District Land and Housing Tribunal to be contravening the provisions of **Regulation 20 of the Land Disputes (The District Land and Housing Tribunal) Regulations, 2002**. It is from this ground I find it for the purpose of ease of reference to quote the provisions of Regulation which states:

**“The judgement of the Tribunal shall always be short, written in simple language and consist of:**

**(a) a brief statement of facts;**

**(b) finding of the issues;**

**(c) a decision; and reasons for the decision.**

It is from the provision above that this Court took trouble to go through the judgment of the Tribunal once again bearing in mind the provisions of Regulation 20. The judgement of the Tribunal in records from pages bares the brief statements of the facts. It is also observed as from the records that the issues were raised and the same were to be determined.

Before embarking on the determination of the issues, **Regulation 20 of the District Land and Housing Tribunal Regulations 2002**, require a judgement to contain finding of the issues. Finding of the issues, is required to bare the issue the

evidence of both sides analysed together which then drives one to the decision and the reasons for the decision.

It is at **page 11** of the judgement that one can find the Hon. Chairperson beginning to determine the first issue. Reading further the records shows in determination of the issue by analysis by the Honourable Chairperson whereas he only dealt with the testimony of the Applicant alone without consideration of the Respondents evidence and to him the same was enough to have driven him to the decision of the issue which can be evidenced at **page 12** of which marks the end of the judgment.

It is from the records above, vividly proven from this juncture that the judgment of the Tribunal is in contradiction with the requirement of **Regulation 20**.

Further, looking into the third requirement that in the decision the reasoning has to be derived from evidence. However, the Chairperson did not in any way show the testimony of the Respondent in relation to the first issue. The Chairperson only talks of what the Applicant stated. And it is from one sided testimony that the Chairperson ruled out that the Applicant failed to prove his case and reasons of such decision was based on such failure.

A judgment like this is said to be a purported judgement since it is not in conformity with the law and hence the same is as if



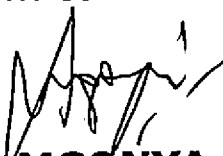
there was no judgement. **From the above I find this ground holds water and is therefore meritious.**

It is at this juncture that I do not find myself with the need to divulge into the remaining grounds of appeal since this 2<sup>nd</sup> ground of appeal completely dispose the appeal before me.

**In the event therefore, I find the appeal partly allowed in the circumstance of the second ground being found meritious.** It is the order of the Court in consideration of the nature of the matter being a land matter that **the same be remitted to the District Land and Housing Tribunal for composition of a proper judgment composed in accordance to Regulation 20 of the (District Land and Housing Tribunal) Regulations 2002. The same to be done expeditiously.**

It is so ordered.

Each party to bear their own costs.



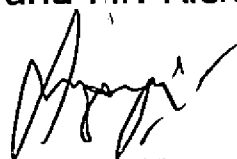
**L. E. MGONYA**

**JUDGE**

**13/08/2021**

**Court:** Judgment delivered in chamber on 13<sup>th</sup> day of August, 2021 before **HON. C. KISONGO, DEPUTY REGISTRAR** in

absence of Appellant, 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents and presence of 2<sup>nd</sup>, 5<sup>th</sup> Respondent and Mr. Richard as Court Clerk.



**L. E. MGONYA**

**JUDGE**

**13/08/2021**