

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 4 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Application No. 195 of 2016)*

DANIEL MALIBWA APPELLANT

Versus

MASENYI KISIKA RESPONDENT

JUDGMENT

14.07.2022 & 14.07.2022

Mtulya, J.:

Mr. Daniel Malibwa (the appellant) was aggrieved by the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 195 of 2016** (the application) hence approached this court complaining on six (6) matters registered in **Land Appeal Case No. 4 of 2022** (the appeal). Today morning when the appeal was scheduled for hearing, he invited Mr. Baraka Makowe, learned counsel, to argue the appeal whereas Mr. Masenyi Kisika (the respondent) enjoyed legal services of learned counsel Mr. Thomas Makongo. However, before the reasons of appeal drafted by the appellant were tabled for contest, Mr. Makowe, being a learned person, cited two (2)

faults in the proceedings and decision of the tribunal and prayed to raise them for court determination before registering materials in favour of the grounds of appeal. The cited faults were: first, confusion in participation of assessors without abiding with the laws regulating land matters; and second, failure of the learned chairman of the tribunal to append signature after recording testimony of each witness during the proceedings of the application.

In substituting the claims, Mr. Makowe cited the record of the application on 13th September 2021 which shows shifting of hands from learned chairman Mr. Kaare to Makombe. The record shows further that on 28th September 2020, Mr. Kaare sat with assessors Milambo and Matiko, whereas on 13th September 2021 when Makombe took over the proceedings of the case, he sat with Mr. Matiko. However, during defence hearing, assessors depicted were Mr. Swagarya and Matiko, who finally furnished their opinions at the end of the application.

According to Mr. Makowe, Mr. Swagarya gave opinions without hearing the prosecution case hence the whole proceedings became a nullity in denying the appellant's rights. Similar Mr. Makowe complained that the learned Chairman took evidence in testimonies of witnesses without abiding with the procedure of taking evidence to authenticate the testimonies. To bolster his

argument Mr. Makowe cited typed proceedings of the tribunal from page 17 to 22 where the signature of the learned Chairman was not appended in the record after recording each witness and finally prayed the testimonies be expunged from the record. The thinking was shared and supported by Mr. Makongo.

I have scanned the record of this appeal as from when the dispute was initiated at the tribunal on 3rd November 2016 to 22nd November 2021 when the decision of the tribunal was rendered down. I noted the two (2) vivid faults at display both in handwritten proceedings and typed proceedings. In the record, a total of four (4) witnesses gave their evidences. Two (2) for the prosecution case and two (2) for the defence case, but all witnesses did not receive signature of the learned chairman at the end of their testimonies to authenticate the evidences. This is discouraged by our superior court, the Court of Appeal (the Court) and this court, and may render the proceedings a nullity (see: **Joseph Elisha v. Tanzania Postal Bank**, Civil Appeal No. 157 of 2019 and **RATCO Company Limited v. Said Salim Said**, Labour Revision No. 5 of 2020).

Similarly, assessor Swagarya appeared in the proceedings of the tribunal on 22nd September 2021 after completion of two (2) prosecution witnesses. In brief, assessor Swagarya heard only two (2) witnesses of the defence side. However, on 19th November

2021, his opinions were recorded for judgment drafting. This is an obvious breach of the law in section 23 (1) & (2) and 24 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] which have already received a bundle of precedents of the Court and this court (see: **Pastor Jackson Nchimbigili v. Temeke Municipal Council & Three Others**, Land Appeal Case No. 62 of 2017; **Edina Adam Kibona v. Abdallah Swebe**, Civil Appeal 286 of 2017; **Kasanga Shabani v. Kasanga Hassan Kasanga & Another**, Land Appeal Case No. 2 of 2018; **Elia Alphonse v. Idrisa Salimu, Misc. Land Case Appeal No. 36 of 2012**; **Awiniel Mtui And 3 Others v. Stanly Ephata Kimambo (Attorney For Ephata Mathayo Kimambo)**, Civil Appeal No.97 of 2015).

This court has said in a number of times that it is a custodian of the law and justice and cannot close its eyes when it sees vivid breach of the law and precedents from our superior courts in judicial hierarchy (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Appeal No. 12 of 2021; and **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021).

I have therefore decided to quash both decisions and proceedings of the tribunal in the application for want of proper application of the land laws. I do so without any order to costs as

the parties' learned minds acted as officers of this court. Any party, who still has interest in the disputed land may wish to prefer a fresh and proper contest in a competent forum entrusted with mandate of resolving land disputes in accordance to the laws regulating land disputes.

Ordered accordingly.



F. H. Mtulya

Judge

14.07.2022

This judgment was pronounced in chambers under the seal of this court in the presence of the appellant, Mr. Daniel Malibwa, and his learned counsel Mr. Baraka Makowe and in the presence of the respondent Mr. Masenyi Kisika and his learned counsel Mr. Thomas Makongo through teleconference based at Tarime District Court at Tarime and in this court.



F. H. Mtulya

Judge

14.07.2022