

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**MISCELLANEOUS LAND APPEAL NO. 17 OF 2021**

*(Arising from Land Appeal No. 66 of 2021 of the District Land and  
Housing Tribunal for Mbeya)*

**MICHAEL MPELETA ..... APPELLANT**

**VERSUS**

**EDSON MWALUGAMBA..... RESPONDENT**

**JUDGMENT**

**A.A. MBAGWA, J.**

This is a second appeal which originates from the decision of the Ward Tribunal for Ihahi in Land Case No. 03 of 2020. The appellant successfully sued the respondent in the Ward Tribunal which entered judgment in the appellant's favour. The respondent was aggrieved by the decision of the Ward Tribunal hence he appealed to the District Land and Housing Tribunal through Misc. Land Appeal No. 17 of 2021.

After hearing the parties, the Hon. Chairman reversed the decision of the Ward Tribunal for Ihahi. He set aside the Ward Tribunal's decision and declared the respondent a lawful owner of the suit premises.

The appellant was not satisfied with the decision of the District Land and Housing Tribunal thus, he appealed to this Court.



The appellant filed a petition of appeal containing the following grounds

1. That the District Land and Housing Tribunal for Mbeya at Mbeya erred both in law and facts when on 23<sup>rd</sup> day of July, 2020 extended time to the respondent to file written submission on 24<sup>th</sup> day of July, 2020
2. That the appellant was condemned unheard for not being given an opportunity to reply to the written submission filed by the respondent on 24/07/2020
3. That the Honourable Chairman was functus officio in granting an order dated 23/07/2020
4. That the appellate Tribunal grossly misdirected itself when it purported to entertain and decide the appeal before it in disregard of its order on the schedule of written submission dated 13/05/2020

When the matter was called on before the Court, the appellant was represented by Amani Mwakolo, learned advocate whereas the respondent had no legal representation. Both parties agreed to dispose of the appeal by way of written submissions which they timely filed.

However, while going through the record of appeal, I noted some fundamental irregularities in the judgment of the District Land and Housing Tribunal which I found sufficient to dispose of the appeal. As such, I will not discuss the grounds raised and argued by the parties.

The impugned judgment did not comply with the mandatory requirement of section 24 of the Land Disputes Settlement Act. Throughout the record, it is clear that the Chairman sat with two assessors namely, Sarah and Sunday. The assessors filed their written opinion and the same were read to the



parties as reflected at page 6 of the typed proceedings dated 29/07/2020. Both assessors were opined that both parties claimed that the suit premises belonged to their deceased parents but no one had a letter of administration of the estates. As such, the assessors were of the unanimous views that the proceedings and consequential decision of the Ward Tribunal were a nullity. They opined that the matter should be remitted to the Ward Tribunal to start afresh and the parties should ensure that they have legal mandate (letters of administration).

For sake of clarity, I find it pertinent to reproduce the respective concluding remarks of assessors

***Sarah 'Kwahiyo ni maoni kwamba kwa sababu hii moja inatosha kuonyesha kwamba baraza la kata liliendesha kesi hadi kutoa hukumu kwa watu ambao shamba si mali yao. Hivyo mwenendo ufutwe na hukumu itenguliwe na shauri lirudishwe mbele ya baraza la kata na kusikilizwa upya ili haki iweze kutendeka na mgogoro usijirudie rudie. Pia wadaawa wawe na nguvu ya kisheria kufungua upya shauri hili. Mrufaniwa alipe gharama za kesi hii maana ndiye aliyeanzisha kesi baraza la kata'***

***Sunday 'Ni maoni yangu kwamba shauri hili lirudishwe tena mbele ya baraza la kata na kuanza upya ili kuweza kulekebisha mapungufu yaliyojitokeza ili kuwataka waliokuwa wasimamizi wa mirathi ndiyo washtakiane'***

From the opinion of assessors, it is clear that they both opined to nullify the proceedings and judgment of the Ward Tribunal on the basis that the

parties had no locus stand. Neither of the assessors found the respondent a lawful owner of the suit premises.

To the contrary, the Hon. Chairman, at page 5 of the judgment, indicated that he concurred with assessors but he proceeded to decide the appeal contrary to the assessors' opinion. In essence, the judgment is self-conflicting. Whereas the Chairman indicates that he concurs with assessors, in actual sense, he decided contrary to the assessors' opinion.

Section 24 of the Land Disputes Court Act requires the Chairman to take into account the opinion of assessors in making decision. The section further provides that the Chairman is not bound with assessors' opinion but where he differs with them, he should assign reasons.

Indeed, by looking at the impugned judgment it is clear that it contravenes the dictates of section 24. The Chairman indicated that he concurred with the assessors but in actual fact he differed with them. Though he was not bound by their opinion, he was supposed to assign reasons for his disagreement as required under section 24.

Since section 24 was not complied with, the proceedings and judgment of the District Land and Housing Tribunal were a nullity. See the case of **Zubeda Hussein Kayagali vs Oliva Gaston Luvakule & Another**, Civil Appeal No. 312 of 2017, CAT AT Tabora.

In view of the above, I hereby quash the proceedings in Misc. Land Appeal No. 17 of 2021 and set aside the consequent judgment. I therefore order that this case file be remitted to the District Land and Housing Tribunal and placed before another Chairman with a different set of assessors in order to hear Misc. Land Appeal No. 17 of 2021 afresh.

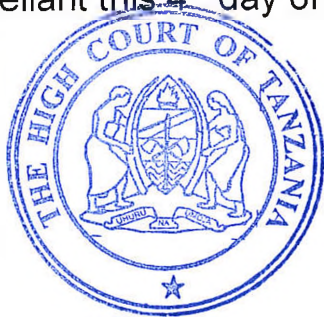
Since the ground on which this appeal has been determined was raised by the court *suo motu*, I make no order as to costs.

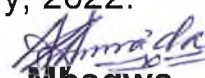
It is so ordered

The right of appeal is explained

  
**A.A. Mbagwa**  
Judge  
04/01/2022

Judgment delivered in the presence of the respondent and in absence of the appellant this 4<sup>th</sup> day of January, 2022.



  
**A.A. Mbagwa**  
Judge  
04/01/2022