

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 104 OF 2021

*(Arising from Land Appeal No. 145/2019 in the District Land and Housing Tribunal
for Mara)*

NCHAGWA MWITA ITUMBO APPELLANT

VERSUS

CHARARI MAKURIRESPONDENT

JUDGEMENT

22nd March & 21st April, 2022.

A. A. MBAGWA, J.:

This is an appeal from the District Land and Housing Tribunal for Mara sitting as appellate Tribunal.

The appellant, Nchagwa Mwita Itumbo sued the respondent, Charari Makuri in the Ward Tribunal for Masongo for encroaching on his land. Upon hearing the evidence of both parties along with visitation at the *locus in quo*, the Ward Tribunal adjudged in favour of the respondent. The trial Tribunal ruled that the disputed land belongs to the respondent.

Aggrieved by the decision of the Ward Tribunal, the appellant appealed to the District Land and Housing Tribunal for Mara via Land Appeal No. 145 of 2019 but the DLHT upheld the Ward Tribunal's decision hence dismissed the appeal.

The appellant was still dissatisfied with the decision of the DLHT. He thus

appealed to this Court via Miscellaneous Land Appeal No. 99 of 2020. Upon hearing the parties and appraisal of the record, this Court (Kahyoza J) noted that assessors did not read out their opinion to the parties before composing a judgment. Consequently, the Court set aside the judgment and remitted the file to the DLHT. The Court directed the Chairman to set a date for assessors to read their opinion before the parties and thereafter proceed to compose a judgment afresh.

As per the record, on 20th July, 2021 when the matter was called on before the DLHT, there was only one assessor, Mr. Matiko. The record tells it all that the other assessor, Mr. Babere was absent because his tenure had expired. As such, only one assessor read his opinion after which the Chairman set a date for judgment. Thus, on 30th August, 2021, the Chairman delivered a judgment in favour of the respondent, Chachari Makuri.

Still aggrieved, the appellant brought the instant appeal. He filed a petition of appeal containing several grounds which can be reduced into three meaningful complaints;

1. That the appellate Tribunal erred in law and facts to compose a judgment without opinion of two assessors as ordered by the High Court.

2. That the appellate Tribunal erred in law and facts to uphold the Ward Tribunal's decision whereas the decision was reached without respective opinion of each member as required by law.
3. That the appellate Tribunal erred both in law and fact to uphold the trial Tribunal's decision despite the strong evidence adduced by the appellant.

When the matter was called on for hearing both parties appeared unrepresented. Being laypersons, the parties had little to tell the Court. The appellant simply adopted the petition of appeal and request the Court to consider the grounds therein and finally allow his appeal. The respondent, on his part, simply told the Court that he was protesting the appeal without more.

I have had an occasion to strenuously navigate through the grounds of appeal along with the record.

To start with the 1st ground in relation to preparation of judgement based on opinion of one assessor instead of two assessors, it is true as contended by the appellant that, in terms of section 23(1) of the Land Disputes Courts Act, the District Land and Housing Tribunal is composed of at least a Chairman and two assessors. Furthermore, it is a settled law that before composing a judgment, the Chairman must receive the opinion

of assessors and take it into account while preparing the judgment. See Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 and the case of **Edina Kibona vs Absolom Swebe**, Civil Appeal No. 286 of 2017. However, the law permits the Tribunal Chairman to proceed to the conclusion of the matter in case either of the assessors, for various reasons, is absent. Section 23(3) of the Land Disputes Courts Act provides;

(3) Notwithstanding the provisions of sub-section (2), if in the course of any proceedings before the Tribunal either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member (if any) may continue and conclude the proceedings notwithstanding such absence.

In the instant appeal, the Chairman composed a judgment based on the opinion of one assessor. However, the record tells it all that the 2nd assessor one Mr. Babere was absent because at the time of giving opinion, his tenure of service has lapsed. The proceedings dated 20th July, 2021 read as follows.

Tarehe 20/07/2021

Akidi

Kitunguru E ----- Mwenyekiti

W/Baraza ---- Mr Matiko

Mdai ----- Yupo

Mdaiwa ----- Hayupo

K/Baraza ----- Pude

BARAZA: Mmoja wa wajumbe wa Baraza waliosikiliza hii kesi, Mzee Babere muda wake wa uteuzi umeisha, hivyo amestaafu. Mjumbe aliyepo, Mzee Matiko amesoma maoni yake mbele ya mrufani.

Amri: Hukumu tarehe 30/08/2021.

Kitunguru

Mwenyekiti

20/07/2021

In view of the reasons assigned and on the strength of the provisions of section 23(3) cited above, I am of unfeigned view that the Tribunal Chairman was justified to proceed with preparation of a judgment based on opinion of one assessor. As such, the first ground of appeal is devoid of merits.

Coming to the complaint that there was no respective opinion of the members of the Ward Tribunal, I outrightly dismiss the complaint because the record is clearly against his lamentation. At page 14 of the typed proceedings of the Ward Tribunal, it is clear that each of the member gave his respective opinion. More so, all of them returned a verdict in favour of the respondent, Charari Makuri. In the circumstances, I find this ground unfounded and consequently dismiss it.

Further, the appellant faulted the appellate Tribunal on the ground that it upheld the trial Tribunal's decision while there was strong evidence on the appellant's side. I have keenly canvassed the trial Tribunal's record but failed to find any justification to fault the lower Tribunals. The appellant claimed, at the trial Tribunal, that the respondent uprooted sisal plants which were meant for boundaries. He continually stated that the matter was reported to the village leaders who managed to settle the dispute amicably hence the sisals were replanted in the border. However, the appellant did not bring any the said village leaders to testify whether the sisal (boundaries) were removed by the respondent from where they planted them. The trial Tribunal visited the *locus in quo* and was satisfied that the suit premises belong to the respondent Charari Makuri. Similarly,

the first appellate Tribunal arrived at the same findings. This court, being the second appellate court, cannot interfere with concurrent findings unless there is misapprehension of evidence or violation of principle of law. See **Peters v Sunday Post Ltd.** [1958] E.A. 424 and **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs A.H Jariwalla t/a Zanzibar Hotel** (1980) TLR 31. Having reviewed the record of the lower Tribunals I found neither of the two.

That said and done, I hold that this appeal is without merits and consequently I dismiss it with costs.

Right of appeal is explained.

It is so ordered.



A. A. Mbagwa
A. A. Mbagwa

JUDGE

21/04/2022

Court: The judgment has been delivered in the presence of both appellant and respondent this 21st April, 2022.

A. A. Mbagwa
A. A. Mbagwa

JUDGE

21/04/2022