

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

LAND APPEAL NO. 02 OF 2022

**(Originating from the decision of the District Land and Housing
Tribunal for Iringa, at Iringa in Application No. 54 of 2018)**

BETWEEN

REGISTERED TRUSTEES OF EVANGELISTIC

ASSEMBLIES OF GOD – MAPANDA.....1ST APPELLANT

ROSE MDESA.....2ND APPELLANT

REGISTERED TRUSTEES OF TANZANIA

ASSEMBLIES OF GOD – MAPANDA.....3RD APPELLANT

THOMAS MBOGO.....4TH APPELLANT

EXAUD NGUGE.....5TH APPELLANT

AND

REGISTERED TRUSTEES OF SEVENTH

DAY ADVENTIST CHURCH MAPANDA.....RESPONDENT

JUDGMENT

28th June & 09th August 2022.

UTAMWA, J.

The appellants, REGISTERED TRUSTEES OF EVANGELISTIC
ASSEMBLIES OF GOD – MAPANDA, ROSE MDESA, REGISTERED

TRUSTEES OF TANZANIA ASSEMBLIES OF GOD – MAPANDA, THOMAS MBOGO and EXAUD NGUGE were aggrieved by the decision (The impugned decision) of the District Land and Housing Tribunal for Iringa (The DLHT). They are now appealing to this court.

In the DLHT, the respondent had sued the respondents for among others, a declaration order that the suit land belongs to the respondent, an order for compensation due to the appellants' act of harvesting trees on the said suit land and a permanent injunction restraining them from trespassing the suit land. The respondent's application was allowed with costs, hence this appeal.

The appellants' appeal is based on the six grounds of appeal which I reproduce as follows:

- 1) That, the Honourable Tribunal erred in law and facts to award the total amount of 19,840,000 to the respondent without any justification and proof.
- 2) That, the Honourable Chairman erred in law and facts for not resolving the issues framed by the tribunal.
- 3) That, the Honourable Chairman erred in law and facts to award Tshs. 10,000/= for each tree without any proof.
- 4) That, the Honourable Chairman erred in law and facts to rule that the disputable land belongs to the respondent without any proof.
- 5) That, the Honourable Chairman erred in law to entertain the application while the respondent failed to describe properly the suit premises.

6) That, the Honourable Chairman erred in law for failure to append the signature at the end of witness' evidence.

At the hearing of this appeal, the appellants were represented by Messrs. Watson Kimbe and Alfred Stephano, learned advocates. The respondent was represented by Messrs. Emmanuel Chengula and Livino Haule, learned counsel. The matter was heard by way of written submissions.

Upon the respective written submissions being filed by the parties, this court posed for composing its judgment on appeal. In the course of doing so however, the court encountered a crucial legal issue which had not been reflected in the grounds of appeal. The appellant's counsel tried to raise it in his written submissions in chief as a new ground. The respondent's counsel in his replying submissions objected the course of rising the issue since it was not a ground of appeal and there was no prior court leave for doing so.

Indeed, the issue arose from the conspicuous facts that, the proceedings of the DLHT shows that, upon the completion of the trial (defence case), the chairman did not require the assessors who sat with him to give their opinion as guided by the law. He only fixed the matter for another date though he apparently showed that, on that other date the matter was scheduled for opinion. The record however, did not indicate any order or sign that the chairman in fact, had required the assessors to give their opinion before he recorded the impugned judgment.

Furthermore, the proceedings do not display the opinion by the assessors though the chairman endorsed (in the proceedings) that they were read. The court thus, suspected that, the course opted by the chairman offended the mandatory provisions of Section 23(2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 (The LDCA) and Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN. No. 174 of 2003 (The GN). This court also found the course taken by the chairman to be an irregularity because, the chairman could not endorse that the opinion were read without firstly showing that he had in fact, required the assessor to give such opinion. Again, though the impugned judgment of the DLHT considered the opinion of the assessors at page 3, this court suspected that step to be irregular because, it is not shown in the record that he had required the assessors to give opinion and the same were not in the proceedings.

Based on the above observations, this court re-opened the proceedings and made an order directing the parties to address it on the following issues:

- i. Whether or not the course taken by the chairman was in accordance with the law cited above.
- ii. In case the answer to the first issue will be negative, then which orders should this court make?

The course taken by this court in re-opening the proceedings was justified in law under the auspices of the guidance by the Court of Appeal of Tanzania (CAT) in the cases of **Zaid Sozy Mziba v. Director of Broadcasting, Radio Tanzania Dar-es-Salaam and the Attorney General**

Civil Application No. 4 of 2001, CAT at Mwanza (unreported) and **Pan Construction Company and another Vs. Chawe Transport Import and Export Co. Ltd, Civil Reference No.20 of 2006, CAT at Dar-es-Salaam** (unreported). These two precedents guide that, when a court is composing its verdict detects a legal issue that was not addressed to by the parties; it can re-open the proceedings and invite the parties to address it on the issue before it determines it.

Furthermore, it is the law that, the court cannot close its eyes on a glaring illegality, the duty of courts is to apply and interpret the laws of the country. This legal stance was underlined in the case of **Tryphone Elias @ Ryphone Elias and Prisca Elias v. Majaliwa Daudi Mayaya, Civil Appeal No. 186 of 2017**, CAT at Mwanza (unreported) at Page 9.

Again, the appellant's act of raising the concern on the irregularity pinpointed above in his written submissions though the same was not a ground of appeal was not justified as rightly contended by the respondent's counsel. This is also a reason supporting the court's course for re-opening the proceedings.

On the date of pronouncing the order for re-opening the proceedings to the parties, Messrs. Watson and Alfred learned advocates appeared for the appellants. The second appellant was also in court and she also represented the first appellant as a pastor thereof. One Kolison Ndokole, a church elder represented the third appellant. On the other side, Messrs. Chengula and Mheluka represented the respondent.

When the order was pronounced, the counsel for both sides promptly and with professional maturity conceded to the legal issues raised by the

court. They agreed that, the irregularity was fatal and they unanimously prayed for the court to order for a re-trial before another chairman and a different set of assessors.

In answer to the first issue posed above, I agree with the counsel for both sides that, the irregularity was fatal for offending the mandatory provisions of the LDCA and the GN cited above. The fact that the record did not show that the chairman had required the assessors to give their opinion connotes that he did not do so at all. He could not thus, endorse in the proceedings that the opinion were read in court and proceed to consider them in the impugned judgment. This view is based on the decisions by the CAT that, failure by the chairman of a DLHT to require the assessors sitting with him/her to give their opinion after a trial, and their failure to read their opinion in court before the parties so that the parties could understand if the chairman considered the opinion in the resultant judgment, is fatal to the trial and vitiates the proceedings and the resultant judgment; see in the cases of **Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017, CAT at Mbeya** (unreported), **Tubone Mwambeta Tubone Mwembeta v. Mbeya City Council, Civil Appeal No. 287, CAT** (unreported) and **The General Manager Kikwengwa Stand Hotel v. Abdallah Said Musa, Civil Appeal No. 13 of 2012, CAT** (unreported).

The CAT gave the guidance just highlighted above in construing the provisions of Regulation 19 (2) of the GN and section 23 (2) of the LDCA.

I therefore, answer the first issue negatively that, the course taken by the chairman was not in accordance with the law, namely Regulation 19 (2) of the GN and section 23 (2) of the LDCA.

As to the second issue, I am of the opinion that, owing the precedents by the CAT just cited above the proper orders for this court to make are to nullify the proceedings of the trial DLHT from when the hearing of witnesses commenced to the end of the defence case. This court is also enjoined to set aside the impugned judgment. As to costs, I agree with the counsel for both sides that, each party shall bear its own costs since no party is to blame for the irregularity under discussion.

In my settled opinion, the above findings suffice to dispose of the entire appeal without considering the grounds of appeal and the arguments advanced by both sides in relation to them. I will not thus, test them, Otherwise I will be performing a superfluous exercise or an academic exercise which is not the core objective of the process of adjudication. I accordingly nullify the proceedings of the DLHT from the date when the hearing of the application started to the date when the defence ended. Its impugned judgment is also set aside. If the respondent still wishes, the matter shall be heard afresh before the DLHT by another chairman and a different set of assessors. Each party shall bear its own costs. It is so ordered.



JHK UTAMWA
JUDGE
09/08/2022

09/08/2022.

CORAM; JHK. Utamwa, J.

For Appellants; Messrs. W. Kimbe and A. Stephano, advocates.

For Respondent; Messrs. Chengula and Muheluka, advocates.

BC; Gloria, M.

Court; Judgement delivered in the presence of the representative for the first appellant (Pastor Rose Ndesa), the second appellant herself (Pastor Rose Ndesa), the representative for the third appellant (church elder, one Mr. Kolison Ndokole), Messrs. W. Kimbe and A. Stephano, advocates for all the applicants, and Messrs. Chengula and Muheluka, advocates for the respondent, in court this 9th August, 2022.



JHK UTAMWA
JUDGE
09/08/2022.