

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA**

LAND APPEAL No. 67 OF 2021

*(Arising from the District Land and Housing Tribunal for Mwanza at Mwanza in
Application No. 12 of 2016)*

BARNABAS LUDORI----- APPELLANT

VERSUS

REGISTERED TRUSTEE OF

ARCHDIOCESE OF MWANZA-----RESPONDENT

RULING

Last Order date: 09.08.2022

Ruling Date: 15.08.2022

M. MNYUKWA, J.

The Appellant Barnabas Ludori is appealing against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza in Application No. 12 of 2016 which was dismissed. In the record, it goes that the dispute was over the suit plot No. 008/047 located at Northern Igogo within Mwanza City, whereas the appellant claimed before the trial tribunal against the respondent, (a Church Institution) for the act of



encroaching into his suit property, demolish the foundation of his building and construct the wall and other buildings without the applicant's consent.

After the hearing of the case the DLHT entered judgment in favour of the respondent. Dissatisfied, the appellant appealed before this court with two grounds of appeal that: -

- i. That the District Land and Housing Tribunal of Mwanza at Mwanza erred in law and in fact for failure to hold that the suit property is legally and lawful owned by the appellant.*
- ii. That the District Land and Housing Tribunal of Mwanza at Mwanza erred in law and in fact for failure to hold that the respondent is unlawful trespassed into the appellant suit property.*

The appellant afforded the service of Mr. Nestory Joseph learned advocate and the respondent engaged Mr. Kisigiro learned advocate. When the matter was before this court on 17.05.2022, the court perused the records and asked parties to address the court as to whether the procedure for visiting locus in quo were properly adhered to.

At the hearing, Mr. Nestor Joseph was the first to address the court and he refers to page 83 of the trial tribunal where it is reflected that the DLHT visited the locus in quo on 30.06.2020 and no further records which shows what transpired. The records did not show persons who visited, the



area visited and what was the observation at the visit. He went on that, though there are no guidelines showing what has to be done when visiting the locus in quo, but he avers that the DLHT was obliged to record what transpired and if, there was any witness who testified his testimony be recorded.

He added up that, the DLHT may also draw a sketch map and after the visit, the tribunal is required to convene and all what was recorded during the visit the locus in quo be read to parties, however none of the above was done. Insisting, he cited the case of **Sikuzani Saidi Magambo & Kirioni Richard vs Mohamed Roble**, Civil Appeal No. 197 of 2018, that the Court of Appeal explained the procedures to be followed when visiting the locus in quo. He asserts that, since the DLHT did not follow the proper procedure in visiting the locus in quo and referred the same on its judgment, that renders the whole proceedings to be vitiated and this court must nullify the proceedings and quash the judgment and Orders of the DLHT.

On the other part, the respondent's learned counsel Mr. Salehe Nassoro holding brief for Mr Kisigiro learned counsel as he was given instructions to proceed, conceded that the visiting locus in quo procedures were not properly followed and therefore he agrees with the appellant's



learned counsel that this court has to give orders to nullify the proceedings and quash the judgment and Orders by the trial tribunal.

After the parties' submissions, and having in mind that it is not mandatory to conduct a visit at the locus in quo, as it remains the discretion of the court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during trial. However, once the court or tribunal opts to visit locus in quo, the proper procedure prescribed in various decision of the Court of Appeal on how to properly conduct the same should be followed. In the case of **Sikuzani Saidi Magambo & Another vs Mohamed Roble**, Civil Appeal No. 197 Of 2018 cited by the appellant learned counsel, at page 6, the Court of Appeal insisted on certain guidelines and procedures which should be observed to ensure fair trial. The Court of Appeal quoted with authority the case of **Nizar M.H. v. Gulamali Fazal Janmohamed** [1980] TLR 29, guidelines and procedures were clearly articulated by this Court, where inter alia the Court stated that:-

*" When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, **the court should attend with the parties and their advocates**, if any, and with much each witness as may have to testify in that particular matter... **When the court re-assembles in the court***

room, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand, or relate to the evidence in court given by witnesses. We trust that this procedure will be adopted by the courts in future [Emphasis added].

In another decision of **Kimonidimtri Mantheakis v Ally Azim Dewji & 14 others**, Civil Appeal No 4 of 2018, Court of Appeal held that:

"... for the visit of the locus in quo to be meaningful, it is instructive for the trial Judge or Magistrate to: One, ensure that all parties, their witnesses, and advocates (if any) are present. Two, allow the parties and their witnesses to adduce evidence on oath at the locus in quo. Three, allow cross examination by either party, or his counsel. Four, record all the proceedings at the locus in quo. Five, record any observation, view, opinion or conclusion of the court including drawings, a sketch plan, if necessary, which must be made known to the parties and advocate if any."

See also **Avit Thadeus Massawe v. Isidory Assenga**, Civil Appeal No. 6 of 2017 (unreported) where the above guidelines and procedures were reinstated.



Now, in the case at hand the records read that, on 05.06.2020 the trial tribunal ordered that the visit in quo to be on 16.06.2020. The date was thereafter postponed to 30.06.2020 where on records it appears as follows: -

Coram: N/A

Assessors: N/A

1.N/A

2.N/A

Applicant: N/A

Respondent: N/A

COURT: *The tribunal visited the locus in quo by the parties and observed what is in the area in dispute.*

Order: *Opinion of assessors on 20.08.2020.*

This is what is read on the trial tribunal record. Based on the procedures emulated by the Court of Appeal in the case of **Niza M.H** (supra), I agree with parties' submissions that failure of the trial tribunal to show what transpired during the visit, was a procedural irregularity on the face of record which had vitiated the trial and occasioned a miscarriage of justice to the parties.

In fine, I hereby declare the trial tribunal Proceedings as a nullity, I quash the judgement and set aside the Decree. I further Order for an



expedited retrial of Land Application No 12 of 2016 before another Chairman with a new set assessor subject to the law of limitation. Since the anomalies and irregularities giving rise to the nullification were raised by this court suo moto, I make no order as to costs.

It is so ordered




M.MNYUKWA
JUDGE
15/08/2022

Court: Ruling delivered this 15th August 2022 in the presence of both parties and the learned counsel of the appellant.


M.MNYUKWA
JUDGE
15/08/2022