

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

AT ARUSHA

MISCELLANEOUS LAND CASE APPEAL NO. 04 OF 2020

(From the decision of the DLHT for Manyara at Babati in Land Case Appeal No. 48 of 2016 originating from Ward Tribunal of Bashnet in Application No. 17 of 2009)

DAUD ARA.....APPELLANT

VERSUS

TIOFIL QOLI.....RESPONDENT

JUDGMENT

14/2/2022 & 9/9/2022

ROBERT, J:-

This is an appeal against the judgment and decree of the District Land and Housing Tribunal (DLHT) for Manyara at Babati in Land Appeal No. 48 of 2016 which dismissed the appellant's appeal and upheld the decision of the Ward Tribunal of Bashnet which was decided in favour of the respondent.

The appellant sued the respondent at the Ward Tribunal for Bashnet for recovery of a piece of land measuring 3 acres allegedly belonging to the appellant. Having heard both parties, the trial Tribunal decided in favour of the respondent. Aggrieved, the appellant unsuccessfully lodged an appeal before the DLHT. He is now before this

court challenging the decision of the DLHT armed with three grounds of appeal namely;

- 1. The DLHT for Manyara at Babati erred both in law and fact by upholding the decision of the Ward Tribunal despite of its legal and factual irregularities.*
- 2. That both Bashnet Ward Tribunal and DLHT for Manyara at Babati erred in law and in fact by failure to examine thoroughly the evidence in the proceedings of the trial Ward Tribunal and submission of the parties and to weigh the evidence in accordance to the standard required before delivering the judgment.*
- 3. That the DLHT erred both in law and in fact by both proceeding, judgment and decree being prepared and delivered by different trial Chairman without giving reasons.*

The appellant prayed for both the trial Tribunal and DLHT decisions to be set aside, a declaration that the proceedings of the Ward Tribunal are null and void due to irregularities, a declaration that the disputed land belongs to the appellant, costs of the case and any other relief that this honourable court deems fit and just to grant.

On his part, the respondent filed his reply to the petition of appeal but failed to enter appearance in Court. He was served through the Court's process server and proof of service was presented in Court. Counsel for the appellant prayed successfully for the appeal to be argued by way of written submissions. The appellant filed his written

submissions as scheduled by the Court while the respondent failed to lodge his submissions.

The respondent having failed to file his written submissions as ordered by the Court, this Court will proceed to consider and examine the submissions filed by the appellant only in the determination of this matter.

Starting with the first ground of appeal, the appellant submitted that the DLHT erred by upholding the decision of the trial Ward Tribunal despite its legal and factual irregularities in respect of its constitution as required under section 11 of the Land Disputes Courts Act [Cap 216 RE 2019]. He explained that, the law requires that there should be a record of all members who attend the hearing of a case to be sure of their involvement in the proceedings and preparation of the award. He argued that, the record is silent on that aspect as it is recorded "*baraza kama awali*" instead of the names of members of the Tribunal. He further complained that none of the members signed in the decision to signify their involvement in the preparation of the decision. That signing has to be on the bottom part of the decision not on top.

Another irregularity pointed out by the appellant is that the decision of the trial Ward Tribunal was signed only by the chairman of

the Tribunal and Secretary who is not a member of the Tribunal and that the proceedings have also been signed by the tribunal secretary who is not a member. Stressing on that point, the appellant cited the case of **Mariam Madali vs Hadija Kihemba**, Miscellaneous Land Case Appeal No. 16 of 2019 and submitted that the act of the Tribunal Secretary signing the proceedings is fatal and his signature in the decision signifies his participation in the composition of the judgment.

On the second ground it was the appellant's submission that the trial Tribunal failed to analyse the evidence of the parties and find out if they were able to prove the case on the balance of probabilities as required in civil cases. He was of the opinion that failure to do so led to erroneous decision that the respondent proved his case against the appellant.

With regards to the last ground of appeal, the appellant faulted the DLHT on the fact that the proceedings of this matter were attended by different Chairpersons without assigning reasons for doing so. He contended that the impugned judgment was prepared by Hon. Kamugisha but delivered by Hon. Mahelele. Further to that, he argued that, the decree subject of this appeal was prepared by Hon. Kamugisha without putting the reason for doing so. It was his further claim that

although the judgment was prepared in May, it was delivered after five months by another Chairman without telling parties where the former Chairman was. This, according to him, vitiated the legality of both judgment and decree of the DLHT rendering them null and void.

On the basis of the arguments made, he prayed for this appeal to be granted with costs.

That being the summary of the appeal and submissions made by the appellant, I will now proceed to determine the merit of this appeal.

In relation to the first ground of appeal, in which the appellant faults the DLHT for upholding the decision of the trial Ward Tribunal without considering the fact that the Tribunal was not properly composed due to the participation of the tribunal Secretary as a member thereof. Having gone through the records of the trial Tribunal it is clear that the Secretary's signature appears both in the proceedings and the decision of the trial Tribunal. However, this Court is of the considered views that, the presence of the secretary's signature in the proceedings and decision of the Tribunal has not in any way prejudiced the appellant or occasioned any failure of justice.

My views on this are fortified by the fact that, the Secretary's signature has not affected the composition of the Tribunal because even

if the signature is removed, the records show that the tribunal was chaired by the Tribunal Chairman and six other members, three of them being women thus properly constituted within the meaning of section 11 of the Land Disputes Courts Act (supra) which provides that for the Tribunal to be properly constituted, there should be not less than four and not more than eight members, three of them women. Afterall, the secretary is not in the list of the individuals who participated in the decision making of the case which appears at the beginning of the proceedings, his signature only appears at the end of the proceedings and judgment which doesn't necessarily mean the said Secretary participated in the decision making.

Although the appellant has argued that the said irregularity is fatal, this Court guided by the provisions of section 45 of the Land Disputes Courts Act (supra) which states;

"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on

account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice”.

I hold that mere presence of the Secretary's signature in the proceedings and decision of the Trial Tribunal, without there being proof of his/her participation in the decision making, is not an irregularity that caused any failure of justice on the part of the appellant so as to vitiate the proceedings and resultant decision. The ground therefore lacks merit.

Now, coming to the second ground of appeal in which the appellant contention is that the trial and DLHT both failed to evaluate and analyse the evidence and that if they did analyse, they would have arrived at a correct decision. The answer to this issue is plain in the records of the trial Tribunal which reveals that the respondent testified before the trial Tribunal that he occupied the disputed piece of land way back before the appellant and built his house there.

His testimony was corroborated by that of his witnesses and the appellant's witnesses who testified in favour of the respondent herein

that he occupied the disputed piece of land way before the appellant and had built his house there. That testimony was vital in deciding whether or not the appellant had proved his case against the respondent which the Trial Tribunal, having properly analysed the same, came to a conclusion that the respondent had established his case on how he came to occupy the disputed land and that he was in occupation of the same for many years before the appellant. This ground also lacks merit.

In the last ground of appeal which carries a complaint that both the judgment and decree of the DLHT are null and void for being prepared and delivered by different Chairpersons, this ground will not take much of my time and I will state right away that it lacks merits. The records reveal that the Hon. Chairman who presided the appeal was later transferred to another duty station and while waiting for the judgment and decree to be ready, the matter was adjourned by a new Chairman who informed the parties of the whereabouts of the former Chairman.

The records further show that the judgment and decree were prepared by the Chairman who presided over the matter but could not deliver the judgment as he had already been transferred thus the new Chairman delivered the judgment. The appellant has not shown how he

was affected by that and since there is no proof of how it affected the legality of the judgment and decree, it is bound to be dismissed.

Having found no merit in any of the grounds raised by the appellant, this appeal fails. The judgments of both lower Tribunals remain intact and undisturbed. The appellant to bear costs.

It is so ordered.



K.N.ROBERT
JUDGE
9/9/2022