IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 29 OF 2022

(Arising from High Court Kigoma Misc. Land Application no. 47 of 2021, arising from Kigoma District Land and Hosing Tribunal Land Appeal No. 2 of 2018, originating from Janda Ward Tribunal Land Dispute No....2017)

HARUNA MALIYATABU NTAHONKILIYE..... APPELLANT

VERSUS

MIKAEL KENGWA MBENGUYE..... RESPONDENT

J U D G M E N T

06/06/2022 & 15/06/2022

MANYANDA, J

The Appellant, Haruna Maliyatabu Ntahonkiliye, been distressed by the judgment and decree of the District Land and Housing Tribunal for Kigoma, hereafter referred to as the DLHT, in Land Appeal No. 2 of 2018 dated 17/12/2018 has appealed to this court on four grounds which may be summarized as follows; -

1. *That the DLHT failed to evaluate the evidence leading to miscarriage of justice;*
2. *The DLHT failed to subject the evidence to exhaustive examination hence associated the case before it with that between the Respondent and one Daudi Kuyata;*
3. *That the DLHT erred in law and facts for not determining the grounds of appeal before it seriatim or generally; and*
4. *That the DLHT was wrong to deliver what it purported to be a judgment while in law is not a judgment*

When the appeal was called for hearing on 6/6/2022 and having heard the parties and going through the record I allowed the appeal and quashed the proceedings, and the judgment. I also set aside the decree. I reserved the reasons which I now give.

The Respondent was represented by Damas Sogomba, learned Advocate while the Appellant was unrepresented.

Mr. Sogomba submitted, before even the Appellant said a word, conceding that the appeal has merits. The reasons he gave are that the impugned judgment of the DLHT apart from missing opinion of assessors, the same has no facts, points of determination, reasons for decision and no analysis of evidence.

The counsel was of the views that the anomalies are so serious such that the judgment is rendered a nullity.

He prayed for rehearing of the case by the DLHT before another chairperson and a new set of assessors. Moreover, he added that since the defects are not blame worthy of the parties, then each bears its own costs.

The Appellant, been a layman had nothing to add except to leave it to the court.

I went through the impugned judgement and found that the submissions by the Counsel are mundane truth. The DLHT chairman, in fact, with due respect, did not write a judgment but rather a short hand style note which not only was unuseful to himself but also not for the parties.

For ease of reference I will reproduce the same hereunder; -

> *"I have carefully gone through the lower courts' (sic) record it is clear that the court (sic) below well evaluated the evidence before it and reached to a fair and just decision. It is revealed in the judgment that the respondent had a same case with one Daudi Kuyaka in the same court as an appellate case (sic) No. 113 of 2013 in which the appellant herein concerning the same subject matter and himself as*

applicant in the lower court (sic) and appellant in this court (sic).

As put by the two assessors of this court (sic) the land is the property of the respondent as he used it since 1990.

That reason alone suffices to dismiss the appeal as I have reason to fault the finding and decision of lower court (sic) and therefore the appeal is hereby dismissed with costs".

As it can be gleaned, the chairman did not only give the facts of the appeals but also that he did not give the points for determination, findings, reasons for the findings and no analysis of evidence at all. Above all he treated the Ward Tribunal as a "Court".

Regulation 20 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN No. 174 of 2003 provides for a format of a judgment which contain mandatory contents. It reads as follows; -

"20 (1) The judgment of the Tribunal shall always be short, written in simple language and shall consist of:-

a) a brief statement of facts;

b) findings on the issues;

c) a decision; and

d) reasons for the decision".

The impugned judgment I have quoted above lacks all the contents listed under Regulation 20 of GN. No. 174 of 2003.

It is my findings that since the Regulation uses the word "shall" which conotes the act is mandatory, then its violation renders the purported judgment a nullity.

That is not the only defect, there is a second defect in the proceedings which is lack of assessor's opinion as mandatorily required by the provisions of Regulation 19 (2) of GN No. 174 of 2003 which require the proceedings to contain the opinion of assessors and an endorsement that such opinion was read out to the parties.

Moreover, it is provided under section 23 (1) of the Land Disputes Courts Act (LDCA) [Cap. 216 R.E. 2019] that the DLHT is composed of a chairman and not less than two (2) assessors.

The superior court of our land, the Court of Appeal of Tanzania has interpreted the above provisions in the case of **Edina Adam Kibona vs. Absolon Swebe,** Civil Appeal No.286 of 2017 to mean the requirements are mandatory, it stated as follow; -

> *"We wish to recap at this stage that trials before the DLHT, as a mater of law, assessors must fully participate and at the conclusion of evidence in terms*

of Regulation 19 (2) of the Regulations, the chairman of the DLHT must require every one of them to give his opinion in writing. It may be in Kiswahili. That opinion must be recorded and must be read to the parties before the judgment is composed".

The Court of Appeal went on stating that;-

"For avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the chairman of the DLHT purports to refer to them in the judgment. However, in view of the fact that the record does not show that the assessors were required to give them, we fail to understand how and at what stage they found their way in the court record. And further in view of the fact that they were not read in the presence of the parties before the judgment was composed. The same have no useful purpose".

The Court of Appeal in the case of **Edna Adam Kibona (supra)** nullified the proceedings and the judgment for violation of Regulation 19 (2) of GN. No. 174 of 2003.

In the instant appeal both the proceedings and the judgment are violative of Regulation 19 (2) of GN No. 174 of 2003.

In the upshot I, do hereby quash both the proceedings and the purported judgment of the DLHT in Land Appeal No. 2 of 2018 and set aside the purported decree thereof. I order retrial of the case before another chairman and new set of assessors.

As creaved by the counsel for the Respondent, I make no order as to costs, each party will bear its own costs because the defects are a blameworthy of the tribunal. Order accordingly.

Dated at Kigoma this 15th June, 2022.

THE HIGH COURT OF TANZANIA

MANYANDA

JUDGE