IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MICS. LAND APPEAL NO. 64 OF 2020

(Originating from the District Land and Housing Tribunal for Dodoma at Dodoma in Land Case No. 160 of 2018, Original from Makutupora Ward Tribunal.)

ERNEY MANYONGA.....APPELLANT

VERSUS

GASTON MBINGAMNO.....RESPONDENT

JUDGMENT

Date of Last Order: 30/03/2022

Date of Judgment: 11/05]/2022

A. Mambi, J.:

This judgment emanates from the grievances of the appellant, **ERNEY MANYONGA** over the decision of the District Land and Housing Tribunal for Dodoma at Dodoma (the DLHT) in Land Appeal No. 160 of 2018.

The material facts are that, the respondent herein sued the appellant before the Makutupora Ward Tribunal (the trial Tribunal) claiming a piece of land he had bought from the

appellant. The respondent in another hand, maintained that the suit land was his as he didn't sell to the respondent. Having heard the parties and their witnesses, the trial Tribunal found in favour of the respondent. The appellant, aggrieved, appealed to the DLHT. The DLHT uphold the trial Tribunal's decision. Aggrieved once again with the DLHT's decision, the appellant is up in arms before this Court marshaling six grounds of appeal. I am not going to outline the grounds of appeal raised by the appellant for the reasons I am going to show in the due course.

When this Court ordered for hearing of this case by way of written submissions, the appellant was unrepresented whereas the respondent enjoyed the services of Mr. Sosthenes Peter Mselingwa-Learned Advocate. When the parties fully complied with this Court's order by filing their written submissions and when I was determined to compose a judgment, upon my perusal on the DLHT judgment and proceedings two illegalities came into my attention, first, despite the presence of assessors' opinions in the proceedings, the same were not read to the parties and second, the judgment lacks reasons.

Starting with the first issue/illegality on assessors opinions; at page 4 of the DLHT typed proceedings shows that, the DLHT heard the parties on 16/07/2020. Then the matter was adjourned to 06/08/2020 for the assessors to give their opinions. However, when the matter came on 10/08/2020 instead of 06/08/2020 the DLHT adjourned to 20/08/2020 for judgment. It was adjourned once more to 20/09/2020 for judgment. Indeed, on this date 20/09/2020 that was when a judgment was

pronounced. There is nowhere in the DLHT proceedings showing how assessors' opinions were recorded and read to the parties. It is just in the judgment where the Chairman is held to concur with the opinions of assessors. The DLHT Chairman failed to properly address himself to the legal principles governing assessors.

The law provides for the composition of the District Land and Housing Tribunal. More specifically, the composition of The District Land and Housing Tribunal and how to deal with the opinion of the assessors are envisaged under 23(1) and (2) of the Land Disputes Courts Act, [Cap. 216 R.E. 2002] provides that;

> *"23 (1) The District Land and Housing Tribunal established under section 22* ***shall be composed of one Chairman and not less than two assessors****.*
>
> *(2) The District Land and Housing Tribunal* ***shall be duly constituted*** *when* ***held by a Chairman and two assessors*** *who* ***shall*** *be required to* ***give their opinion before the Chairman reaches the judgment****."*

Similarly, Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides that;

> *"Notwithstanding sub-regulation (1)* ***the Chairman shall, before making his judgment****, require every assessor* ***present at the conclusion of hearing to***

give his opinion in writing *and the assessor may give his opinion in Kiswahili."*

Reading between the lines on the above the provisions of the laws, it is clear that the involvement of assessors is mandatory. The law mandates assessors to give their opinion at the conclusion of the hearing and their opinion must be recorded on the proceedings and reflected on the judgment.

Indeed, the DLHT records do not show if the Chairperson recorded the assessors' opinion apart from just saying that the assessors opined that the respondent was the lawful owner. The position of the law is clear that the Tribunal Chairman must record and consider the assessors' opinion and in case of departure from the assessors' opinion he/she must give reasons. The records show that the Hon Chairman in his judgment did not show if he considered the assessors' opinion and he even did not properly evaluate the evidence and give the reasons for his decision. It follows that, the role of assessors is more meaningful if they actively and effectively participate in the proceedings before giving their opinion during trial and before judgment is delivered. The Court in ***TUBONE MWAMBETA vs. MBEYA CITY COUNCIL, Land Appeal No. 25 of 2015 CAT*** at Mbeya (unreported) which cited the case of ***SAMSONNJARAI AND ANOTHER vs. JACOB MESOVORO, Civil Appeal No. 98 of 2015*** (unreported) had this to say:

"in determining an appeal which originated from the District Land and Housing Tribunal whereby, the Court said, even if the assessor had no question to ask, the proceedings should show his name and mark "NIL" or else it will be concluded that he/she

was not offered the opportunity to ask questions and did not actively participate in the conduct of the trial. The failure of actively and effectively participation of assessors during the proceedings it was declared by the court that the trial a nullity for miscarriage of justice and ordered a trial de novo"

See also **ABDALLAH BAZAMIYE AND OTHERS vs. THE REPUBLIC, [1990] TLR 44.**

There is no doubt that the chairman of the DLHT is bound to observe Regulation 19 (2) of the Regulations (supra) which require the assessors present at the conclusion of the hearing to give their opinion in writing. However, in the purported proceeding and Judgment of the Tribunal there is nowhere to show if the assessors' opinion were recorded which in my view their opinion did not form part of the proceedings and judgment. The consequences of such omission was clearly addressed by the court in ***TUMBONE MWAMBETA case (supra)*** at page 16 where it was held that;

"...the omission to comply with the mandatory dictates of the law cannot be glossed over as mere technicalities....the law was contravened and neither were the assessors actively involved in the trial nor were they called upon to give their opinion before the Chairman composed the judgment. This cannot be validated by assuming what is contained in the judgment authored by the Chairman as he alone does not constitute a Tribunal. Besides, the lack of the opinions of the assessors rendered the decision a nullity and it cannot be resuscitated at this juncture by seeking

the opinion of the Chairman as to how he received opinions of assessors..."

See also the decisions of the Court in ***DORA TWISA MWAKIKOSA VS ANAMARY TWISA MWAKIKOSA Land Appeal No.44 of 2015, CAT at Mbeya and SIKUZANI SAIDI MAGAMBO & Another vs Mohamed Roble Civil Appeal No.197 of 2018*** respectively.

Coming to the second issue/illegality on reasons of the judgment; at page 2 of the DLHT typed judgment shows that the Chairman having analyzed the parties' submissions he ended up stating that he was satisfied that the ward Tribunal was correct to declare the respondent to be a lawful owner of the suit land. The DLHT Chairman did not go further as to how and why he was in agreement with the decision of the trial Tribunal. It is the settled principle of law that the judgment or ruling must show how the evidence has been evaluated with reasons. It is trite law that very judgment or ruling must be written or reduced into writing by the presiding judge or chairman himself or under his personal direction in the language of the court and must contain the ***point or points for determination, the decision thereon and the reasons for the decision***. One cannot write a judgment without proper reasons. The law is clear that the judge or magistrate must show the reasons for the decision in his judgment. This is found under Order XXXIX Rule 31 of the Civil Procedure Code, Cap 33 R:E 2019 which provides for the Contents, date and signature of judgment. The provision states that

"The judgment of the Court shall be in writing and shall state–

(a) ***the points for determination;***

(b) the decision thereon;

(c) ***the reasons*** *for the decisions; and*

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the judge or by the judges concurring therein".

Under this section the word **"shall"** according to the law of Interpretation Act, Cap1 [R.E.2019] implies mandatory and not an option. This means that any judgment must contain point or points for determination, the decision thereon and the reasons for the decision. The record such as the judgment of the DLHT Chairman does not show the point of concurring with the decision of the trial Tribunal and evaluating evidence and reasons on the decision. It is my strongest view that, that was wrong.

Having observed those irregularities, this court has the powers vested under the legal provisions of the law to make any order. More specifically this court is empowered to exercise its powers under section 42 and 43 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] to revise the proceedings of the District Land and Housing Tribunals if it appears that there has been an error material to the merits. Indeed section 43 (1) (b) the Land Disputes Courts Act provides that;

"In addition to any other powers in that behalf conferred upon Supervisory and the High Court, the High Court (Land Division)

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit".

The underlying object of the above provisions of the two laws are to prevent subordinate courts or tribunals from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. See ***Major S.S Khanna v. Vrig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 409; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406.*** The provisions cloth the High court with the powers to see that the proceedings of the subordinate courts or tribunals are conducted in accordance with the law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *suo motto* as this Court has done in this case. The court can also do if it is moved by any party.

Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality, irregularity, correctness and propriety of the decision made by the DLHT.

Having established that in this case the trial Tribunal has failed to follow the legal principles that renders the proceedings and judgment incompetent, the question is, has such omission or irregularity occasioned into injustice to any party.? I wish to refer the decision of court in ***Fatehali Manji V.R, [1966] EA 343,*** cited by the case of ***Kanguza s/o Machemba v. R Criminal Appeal NO. 157B OF 2013.*** The Court of Appeal of East Africa restated the principles upon which court should order retrial. The court observed that:-

> *"...in general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its particular facts and circumstances and an order for retrial should only be made where* ***the interests of justice require it and should not be ordered where it is likely to cause an injustice to the accused person...***"

In my considered view, there is no any likelihood of causing an injustice to any party if this court orders the remittal of the file for the DLHT to properly deal with the matter immediately. The Tribunal should consider this matter as priority on and deal with it immediately within a reasonable time to avoid any injustice to the appellant resulting from any delay. It should also be noted that all appeals that are remitted back for retrial or trial de novo need to be dealt expeditiously within a reasonable time. Having observed that the proceedings at the Tribunal was tainted by irregularities, I find no need of addressing other grounds of appeal.

For the reasons given above, I nullify the proceedings and judgment of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Application No. 64 of 2020 and the decree made thereto. This matter is remitted to the District Land and Housing Tribunal to be freshly determined. Given the circumstances of this case, this court orders the matter be heard *de novo* by the same the District Land and Housing Tribunal but chaired by a different Chairperson with different set of assessors. Where it appears the Same Tribunal has no more than one Chairperson, the chairperson from other nearest Tribunal within Dodoma region should be assigned this case. If the parties are interested to proceed prosecuting their case, they should all be summoned to appear within reasonable time.

No orders as to the costs. Order accordingly.

A.J. MAMBI

JUDGE

11/05/2022

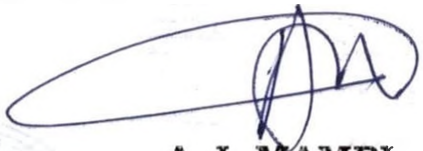
Judgment delivered in Chambers this 11th day of May, 2022 in presence of all parties.

A.J. MAMBI

JUDGE

11/05/2022

Right of appeal explained.



A.J. MAMBI

JUDGE

11/05/2022