IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

LAND APPEAL NO.35 OF 2020

(Arising from the decision of the District Land and Housing Tribunal for Singida at Singida on Land Application No 21 of 2018)

JUMANNE YUSUPH .....1ST APPELLANT

AMINA SELEMANI.....2ND APPELLANT

MWANKONKO AUCTION MART.....3RD APPELLANT

VERSUS

MAJII NYEGHEE.....RESPONDENT

JUDGMENT

Date of Last Order: 13/05/2022

Date of Judgment: 20/05/2022

A. Mambi, J.:

This is an appeal lodged by the appellants challenging the decision of the District Land and Housing Tribunal (DLHT) resulted from land Application No.21 of 2018. The District Land and Housing Tribunal of Singida at Singida, made the decision in favour of the respondent by declaring the respondent to be the lawful owner of the disputed land.

Aggrieved, the appellant lodged this appeal basing on four grounds.

During hearing both parties appeared unrepresented.

The first appellant briefly submitted that he relys on the grounds of appeal. He added that the matter at the DLHT was res-judicata. On the other hand the respondent contended that the grounds of appeal has no merits as the suit land belonged to him since 14/10/20214.

Before I considered all grounds of appeal I perused the documents from the DLHT and observed that there were irregularities on the entire proceedings. The irregularities involved the involvement of the assessors. Having considered submissions by both parties in line with the thorough perusal from the records of the DLHT, I am of the view that the main issue is whether there were any irregularities related to the opinion of the assessors at the DLHT. My perusal from the proceedings show that the tribunal was composed of the chairman and assessors. However, there is nowhere to show if the opinion of the assessors were recorded or read before the parties. In other words the tribunal proceedings were tainted by incurable irregularities. I have gone through the records from the Trial Tribunal and observed that the proceedings and judgment of the Tribunal was tainted by irregularities that in my view jeopardized justice to the appellant and even the respondent. The records of the District Land and Housing Tribunal show that The Trial Tribunal Chairman failed to properly address himself to the legal principles governing assessors.

It should be noted that the question of the opinion of the assessors is the matter of law. The composition of assessors and how to deal

with their opinion are envisaged under 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] 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****."*

I also wish to refer Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 that are made under the main Act. That regulation provides that;

> *"Notwithstanding sub-regulation (1)* ***the Chairman shall, before making this 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 provisions of the laws it is clear that the involvement of assessors are necessary and they must give their opinion at the conclusion of the hearing and before the Chairman composes his Judgment. The opinion of the assessors must be made in writing and read to the parties. On top of that, the chairman must record the opinion of the assessors under the proceeding. In my considered view, the role of assessors will be more meaningful if they actively and effectively participate in the proceedings before and after giving their opinion during trial and

before judgment is delivered. Worth referring the decision of the Court of Appeal in ***TUMBONE MWAMBETA vs. MBEYA CITY COUNCIL, Land Appeal No. 25 of 2015 CAT.*** In addressing the importance of reading the opinion of the assessors to the parties including recording those opinion, the court observed that;

> *"Since Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 requires every assessors present at the trial at the conclusion of the hearing to give his opinion in writing,* ***such opinion must be availed in the presence of the parties*** *so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the chairman in the verdict". (Emphasis supplied with)*

As I alluded above, my perusal has revealed that the Trial Tribunal records do not show if the Chairperson recorded the assessors' opinion apart from just writing his judgment and making his decision. Indeed 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 (proceedings) show that the Hon Chairman did not record the opinion of the assessors and the opinion were not read to the parties. I wish to refer the decision of the court in **EDINA ADAM KIBONA vs ABSOLOM SWEBE (SHELI) Civil Appeal No.286 of 2017.** The court in this case at page 5 and 6 observed that:

> *"For the 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 District Land and Housing Tribunal purports to refer to them in his judgement. 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 in further view of the fact that* ***they were not read in the presence*** *of the parties before the judgement was composed, the same have no useful purpose".*

The Court in ***TUMBONE MWAMBETA vs. MBEYA CITY COUNCIL,*** (supra) 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"

It is trite law that the chairman of the Tribunal 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. The proceedings must reflect that the opinion of the assessors were read before the parties and subsequently recorded. However, in the purported proceedings the Tribunal did not show if the opinion of the opinion of assessors who were present during the conclusion of the hearing were read and recorded. The implication of such omission (non-involvement of the assessor) 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 an 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".* [Emphasis added].

Having observed those irregularities by this court suo mottu, this court needs to use its discretionary powers vested under the legal provisions of the law. Indeed 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 the High Court, the High Court,*
>
> *(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 law is 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 are conducted in accordance with 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 *sua moto*. 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 District Land and Housing Tribunal.

It is clear that failure to involve the opinion of the assessors by the Chairman in his decision and proceedings caused miscarriage of justice. Having observed the irregularities at the tribunal, I find more justice to either make an order for retrial or any order. 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****..."*

I am well aware that an order for retrial should only be made where the interests of justice require it. 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 District Land and Housing Tribunal 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 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 were 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 Tribunal in Land Application No 21of 2018 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 mater be heard *de novo* by the same the District Land and Housing Tribunal but chaired by a different Chairperson and different set of assessors.
All parties should all be summoned to appear within reasonable time. No order as to the costs. Order accordingly.

A.J. MAMBI

JUDGE

20/05/2022

Judgment delivered in Chambers this 20th day of May, 2022 in presence of both parties.

A.J. MAMBI

JUDGE

20/05/2022

Right of appeal explained.

A.J. MAMBI

JUDGE

20/05/2022