

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

LAND APPEAL NO. 30 OF 2022

(Arising from Application No. 63 of 2020 in the District & Housing Tribunal for Dodoma
at Dodoma)

EVA ALISON MWAMPELWA

@EVA SALUM BAKARI..... APPELLANT

VERSUS

1. ESTER MGWENO

2. KASPAR K. MMUYA

3. MSACHE PATRICK HARUNI

..... RESPONDENTS

10/8/2022 & 8/9/2022

JUDGMENT

MASAJU, J

The Appellant, Eva Alison Mwampelwa@Eva Salum Bakari, unsuccessfully sued the Respondents Ester Mgwen, Kaspar K. Mmuya and Msache Patrick Haruni for trespass in the District Land and Housing Tribunal for Dodoma at Dodoma. Aggrieved by the trial Tribunal's decision, the Appellant has come to the Court by way of an appeal.

When the appeal was heard in the Court on the 1st and 12th day of August, 2022 the Appellant was represented by Mr. Paul Nyangarika and Ms. Josephine Mzava, the learned counsels while the Respondents were represented by Mr. Erick Christopher, the learned counsel.

During hearing of the appeal, the Appellant raised an issue that the Assessors opinion was not read over to the parties in the trial Tribunal. The Appellant prayed the Court to nullify the trial by the trial Tribunal and order for trial "*de novo*" before another chairman with a different set of assessors.

The Appellant also submitted that the Exhibits D1, D3 and D4 admitted in evidence were not read over to the parties before the trial court contrary to **Semen Mgonela Chiwanza V. The Republic** (CAT) Criminal Appeal No. 49 of 2019. The Appellant prayed the said exhibits to be expunged from the record of the trial court.

The Respondent contested the appeal by submitting on the irregularities that the assessors opinion were read over in the trial Tribunal in the presence of the parties although the record of proceedings does not specifically mention the assessors severally reading their opinion.

As regards the exhibits being allegedly not read, the Respondents submitted that the Exhibits D1, D3 and D4 were read over to the Court upon its admission in evidence. The Respondent added that the Appellant's exhibits P1 and P2 were the ones not read.

In rejoinder, the Appellant maintained her submissions in chief and added that, as regards to the reading of exhibits to the Court, the principle applies to both civil and criminal cases as per **Bulungu Nzungu V. The Republic** (CAT) Criminal Appeal No. 39 of 2018, Shinyanga Registry.

Indeed, after going through the original record of proceedings of the trial Tribunal, the Court has noted some procedural irregularities thus the Court shall not attempt the appeal on merit but rather focus on the irregularities worthy disposing of the appeal.

The original handwritten record of proceedings specifically on the 30th day of November, 2021 reads thus;

"Tarehe: 30/11/2021

Mwenyekiti: J. Kinyerinyeri

Mdai- Josephine, Advocate

Mdaiwa- (1) Absent

(2) Absent

(3) Absent

Karani: R. Jingu

Tribunal

The matter is for reading of the assessors opinion.

Order

Assessors opinion have been read to the parties by the assessors themselves.

Tribunal

The matter is for judgment but the same is not ready let the same be placed on 1/2/2022

Order

Judgment on 1/2/2022

Signed

30/11/2021."

The assessors' names do not appear on the original handwritten record of the trial Tribunal's coram on the said date but the Tribunal alleges the assessors opinions were read by the assessors themselves. The Court wonders as to how the assessors whose names are not on the coram could have themselves read their opinion to the parties on that particular day!. The

record does not also reveal the assessors names severally reading out the opinion as alleged by the trial Tribunal. Thus, in the absence of the names of the Assessors on the coram of the trial tribunal, it becomes extremely difficult to get the proof that the Assessors were party of the coram and ever read their written opinion in the presence of the parties. According to section 23 (2) of the Land Disputes Court Act, [Cap 216 RE 2019] the coram of the District Land and Housing Tribunal is made up of a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment. This is what makes a duly constituted District Land and Housing Tribunal. So, the names of assessors who make the coram of a particular proceedings in the District Land and Housing tribunal must appear on the record of proceedings and whatever they severally do in the discharge of their duties must be reflected on the record of proceedings accordingly.

Non- compliance of section 23(2) of the Land Disputes Courts act, [Cap 216 RE 2016] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 thereof are serious procedural irregularities which can not be cured by section 45 of the Land Disputes Courts Act, [Cap 216 RE 2019]. Pursuant to **Edna Adam Kibona V Abosolom Swebe (Shell)** (CAT), Civil Appeal No. 286 of 2017 Mbeya Registry, and **Sikuzani Said Magambo & Kirioni Richard V. Mohamed Roble** (CAT), Civil Appeal No. 197 of 2018, Dodoma Registry such incurable irregularities vitiate the trial proceedings, decision, decree and orders thereof.

By virtue of the revisionary powers of the Court under section 43 (1) (b) of the Land Disputes Courts Act [Cap 216] the trial record of proceedings, judgment and orders of the trial Tribunal for Dodoma at Dodoma are hereby severally and together nullified, quashed and set aside respectively. There

shall be a trial "*de novo*" of the land dispute, before another chairman with a different set of assessors. The parties shall bear their own costs.

The Court, in passing, hereby observes that the typewritten record of proceedings of the trial tribunal in some areas does not reflect its original handwritten records. For instance, the original handwritten record reveals that the witnesses Eva Alison Mwampelwa (PW1) Edda Daniel Nyatunyi (PW2), Elirehema Jonathan (PW3) and Emmanuel Manyika (PW4) swore prior to their testifying but the typewritten record does not so show. Again, the original handwritten record of proceedings of the 30th day of November, 2021 does not reveal the names of the assessors, if any, who formed the coram of the trial tribunal but the typewritten record names the assessors who allegedly formed the coram of the tribunal on that particular day. This leaves much to be desired in terms of the authenticity and legality of the typewritten record of the trial tribunal. The sooner the challenge is worked upon by the tribunal, the better in the interest of justice.




GEORGE M. MASAJU

JUDGE

8/9/2022