

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBWA DISTRICT REGISTRY

AT BUKOBWA

MISC. LAND APPEAL NO. 26 OF 2022

(Originating from Land Appeal Case No. 20 of 2018 of the District land and Housing Tribunal for Karagwe at Kayanga which originates from Civil Case No . 03 of 2015 of the Murongo Ward Tribunal)

VALERIA NARIST APPELLANT

VERSUS

ERNEST KARUNGI..... RESPONDENT

JUDGMENT

*06/09/2022 & 30/09/2022
E.L. NGIGWANA, J.*

This is a second appeal. The matter traces its origin from the decision of Murongo Ward Tribunal in Civil Case No. 3 of 2015 where by the Appellant Valeria Narist sued the respondent Ernest Karungi for trespassing into her land. On his side, the respondent alleged that he purchased the said land on 27/04/2004 from the Appellant's mother. Upon trial, the trial tribunal decided the matter in favour of the Appellant herein.

Aggrieved by the decision of the trial tribunal, the respondent Ernest Karungi appealed to the District Land and Housing Tribunal vide land Appeal No. 20 of 2018. Upon, hearing the parties, the decision of the trial tribunal was quashed and set aside and the respondent herein was declared the owner of the disputed land.

Aggrieved by the decision of the Appellate tribunal, the Appellant has knocked the doors of this court clothed with three grounds of appeal:-

- 1. That, Appellate Tribunal erred both in law and fact by allowing the appeal by the Respondent herein while the Appellant managed to prove her allegation under the balance of probabilities.*
- 2. That, the Appellate Tribunal erred in law and fact by deciding the appeal against the weight of evidence.*
- 3. That, the appellate tribunal erred in law when conducted the hearing while not properly constituted.*

Wherefore the appellant is praying for this court to allow this appeal, quash and set aside the decision and orders of the DLHT, and confirm the decision of the trial tribunal.

When the matter came from hearing Mr. Jovin Rutainulwa, learned counsel for the Appellant abandoned the 1st and 2nd grounds of appeal, hence remained with the third ground only.

Arguing the third, ground, Mr. Rutainulwa submitted that accordingly section 34 (1) and section 23 (1) of the Land Disputes Courts Act, Cap 216 R.E 2019, the tribunal is properly constituted when held by one chairman and not less than two assessors. He added that the compliance of the herein cited provisions of the law is mandatory. The learned advocate further submitted that the hearing of Appeal No. 20 of 2018 commenced on 13/07/2018, but the proceedings revealed that on that date the Hon. Chairman did not sit without assessors, the omission which renders the proceedings, resultant judgment and orders a nullity. He ended his submission urging the court to nullify the proceeding of the DLHT, quash and set aside the judgment and orders thereto, and confirm the decision of the trial tribunal.

In reply, Mr. Angelo, learned advocate for the respondent conceded that the procedural irregularity committed by the DLHT is fatal in the sense that it renders the proceedings and the judgment and orders thereto a nullity. He conceded to the prayer that the proceedings of the DLHT be nullified, judgment and orders thereto be set aside. He added that under the circumstances of this case, the remedy is not to co confirm the decision of the Ward Tribunal, but to order a re-trial before another Chairman sitting with a different set of assessors.

Having heard both parties, the issue before me is to determine whether the DLHT was properly constituted when Appeal No. 20 of 2018 was called on for hearing.

Section 34 (1) of the Land Disputes Courts, [Act Cap. 216 R.E 2019] provides that;

"The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors, and shall:-

- (a) Consider the records relevant to the decision;*
- (b) Receive such additional evidence; and*
- (c) make such inquiries, as it may deem necessary"*

It is therefore apparent that, according to section 23 (1) and (2) and section 34 (1) of the Land Disputes Courts Act, [Cap. 216 R.E 2019], the DLHT when exercising its Original Jurisdiction or appellate jurisdiction, is properly constituted when it consist of one Chairman and not less than two

assessors. Unless properly constituted, the DLHT has no Jurisdiction to determine the matter before it.

In the matter at hand, both the hand written and typed proceedings of the DLHT revealed that Appeal No.20 of 2018 was heard by way of written submissions but the Chairman sat without assessors. Let the record speak for itself;

" Date: 13/07/2018

Corum: R.E Assey

Amina: B/C

Members: Nill

Appellant: Present

Respondent: Present

Order: Mention on 12/09/2018. Appellant to file submission in 21 days by 03/08/2018, reply in 21 days by 24/08/2018 and rejoinder in 7 days by 02/09/2018. Parties to attend.

Sdg R.E Assey

Chairman

13/07/2018"

The record further revealed that on 12/09/2018 when the matter came for mention, the Hon. Chairman again did sit without assessors. Yet, the DLHT issued the orders as follows;

"Order: Judgment on 16/10/2018. Assessors to opine. Parties to attend

Sgd R.E Assey

Chairman

12/09/2018"

The opinions of assessors namely; **Longino Sylvester and Ms. Lukuletia Saulo** were read on 17/08/2021. They opined in favour of the respondent, though in the judgment, the Hon. Chairman differed with their opinion.

Reading what transpired in the DLHT, it is obvious that Appeal No. 20 of 2018 was heard by a tribunal which was not properly constituted because the assessors who gave their opinion did not sit with the Hon. Chairman when the matter was called on for hearing, and for that matter, they could not opine.

Now, the question is whether the said omission is a fatal that goes to the root of the matter, and consequently, vitiating the proceedings and the resultant judgment?.

The fatality of any irregularity depends upon whether or not it occasioned a miscarriage of justice. If it has occasioned a miscarriage of justice, is incurable. As far as land matters like the present one are concerned, section 45 of the Land Disputes Courts Act Cap 216 R.E 2019 provides that;

"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."

The question of jurisdiction for any court/tribunal is basic; it goes to the very root of the authority of the court to adjudicate upon cases. Since DLHT

was not properly constituted when heard Appeal No.20 of 2018, it is obvious that it had no jurisdiction to hear the matter. The hearing of land disputes (whether original or appeals) in the DLHT cannot be commenced by the Hon. Chairman without the aid of two assessors. Indeed, what transpired in the DLHT amounted to a gross irregularity which cannot be cured by section 45 of the Land Disputes Courts Act, [Cap. 216 R. E 2019] because composition of the tribunal is not a mere procedural aspect, but a legal issue which touches jurisdiction of the Tribunal when making decisions.

In the event and for the interest of justice, I am constrained to invoke revisional powers of this court under section 43 (1) (b) of the Land Disputes Courts Act R: E 2019 to nullify the proceedings of the DLHT, quash and set aside the judgment and orders thereto. The case file is remitted back to DLHT for an expeditious hearing before another chairman and new set of assessors. For avoidance of doubt, the Petition of Appeal and reply to petition in respect of Appeal No. 20 of 2018 are intact. Given to the fact that the anomaly was caused by the Tribunal, each party shall bear its own costs. It is so ordered.

Dated at Bukoba this 30th day September, 2022.

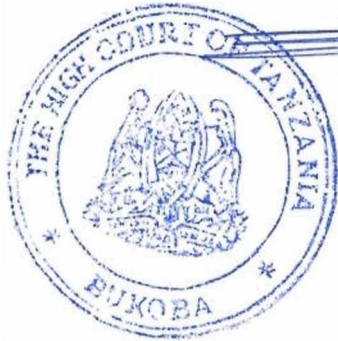


E.L. NGIGWANA

JUDGE

30/09/2022

Judgment delivered this 30th day of September, 2022 in the presence of both parties in person, Hon. E.M. Kamaleki, Judges Law Assistant and Ms. Mwashabani, B/C.



E. L. NGIGWANA

JUDGE

30/09/2022