

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO. 84 OF 2021

*(Originating from a Maswa District Land and Housing Tribunal in Land
Application No. 40 of 2020)*

EMMANUEL MASUKA NDATURUAPPELLANT

VERSUS

JOSEPHAT KUYENGA MAGORI.....RESPONDENT

JUDGMENT

30th September, 2022
7th October, 2022.

L. HEMED, J.

This Appeal originates from the decision of the District Land and Housing Tribunal for Maswa in Land Application No. 40 of 2020 which was delivered on 17th day of November, 2021. The dispute before the trial Tribunal was on ownership of the piece of land measuring 15 acres situated at Yoma street, Somanda Ward within Bariadi District in Simiyu Region.

It was the Respondent herein one **JOSEPHAT KUYENGA MAGORI** who successfully instituted the suit against the present Appellant **EMMANUEL**



MASUKE NDATURU seeking to be declared lawful owner of the suit property and for vacant possession.


Having determined the matter before it on merits, the DLHT declared the respondent herein owner of the suit land. The Appellant herein was ordered to vacate from the suit premises.

Aggrieved by the said decision, the Appellant rushed to the gates of this Court with a Memorandum of Appeal containing the following grounds: -

" 1. THAT: the trial chairman erred both in law and fact for determining the matter while the applicant and now the respondent herein has got no locus stand to sue and to be sued on behalf of his father basing or relying on the letter purported to be a deed of Gift while not.

2. THAT: the trial chairman erred both in law and facts for admitting exhibit P1 while it is defective and has got different names from exhibit P2 while giving it weight on deciding the matter hence wrong decision.

3. THAT: the trial chairman erred both in law and facts for failure to read the assessors opinion to the parties.



4. THAT, the trial chairman erred both in law and facts for failure and reject to admit the documents tendered by the appellant herein as evidence before the tribunal which was so important and crucial on determination of the matter hence wrong and unjustifiable decision.

5. THAT, the trial chairman erred in law and facts for failure to analyses (sic), evaluate and consider properly the evidence adduced by appellant on support of his case before the tribunal (sic)."

The Appellant is thus praying this court to allow the Appeal. When the matter was called for hearing, the Appellant was represented by Mr. Daud Masunga learned advocate while Mr. Emmanuel Botamwa was for the respondent.

In determining the appeal at hand, I have opted to begin with ground No.3 in which the Appellant is blaming the trial chairman that he failed to cause the assessors opinion to be read over to the parties. Submitting on this ground, Mr. Masunga stated that in the case at hand, the opinion of the assessors were not read over to the parties as required by the law, that is section 23(1) & (2) of the Land Disputes Courts Act Cap 216 and Regulation 19 (1) and (2) of GN.



No. 174 of 2003. To support his argument, he cited the decision of this Court in **Hosea Andrea Mushogi Vs Charles Gabagambi**, Land Case No. 66 of 2021 (High Court Bukoba) and the Case of **Eliumba Eliezel Vs John Jaja**, Civil Appeal No. 30 of 2020. He submitted that the proceedings and Judgment of the trial Tribunal be nullified.

In reply there to, Mr. Botamwa argued that the opinion of assessors were written in Swahili and after having been written, they were read over to the parties. According to Mr. Botamwa, order regarding the assessors opinion to prepare opinion was made on 23/06/2021 after the closure of defence case and were to be read on 30/08/2021 but could not be read to the parties on the said date because the presiding chairman had been transferred, hence, it was adjourned to 17/11/2021 on the date judgement was to be delivered.

I have gone through the proceedings of the trial tribunal, practically that of 17th day of November, 2021 and found the following;

"17/11/2021

CORAM

Hon. J.F.Kanyerinyer – Chairman



Assessors^{1st} Zuhura Magenya

2nd Ester Kulwa

Applicant: Butamo - Adv

Respondent – Masunga – Adv

T/clerk – S. Allen

Tribunal

*The matter was for reading assessors opinion
and judgment Assessors opinion has been read to
the parties where by the same opined that the
applicant was the lawful owner of the land.*

Judgement was passed

Sgn

J.F.Kanyerinyeri

Chairman

17/11/2022"

From the proceedings shown herein above, assessors opinion and
Judgement were read and delivered to parties at the same time. The question
is whether it was proper.



In the case of **Edina Adam Kibona Vs Absolum Swebe (Sheli)**, Civil Appeal No. 286 of 2017, the Court of Appeal of Tanzania had this to say;

*"We wish to recap at this stage that in trial before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of evidence, it (sic) term of Regulation, the chairman of the District Land Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili. That opinion must be in the record and **must be read to the parties before the Judgement is composed.**" (emphasis added)*

From the above binding decision of the Court of Appeal of Tanzania it is now a settled law that opinion on assessors must be read over to parties before the chairman embarks to compose judgment. The rationale of so doing was pointed out by the same superior Court, (CAT) in the case of **Tubone Mwambeta Vs Mbeya City Council**, Civil Appeal No. 287 of 2017, where it was held that;

".....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 final Verdict"

In the case at hand, it appears (from the proceedings) that the Judgement and the assessors opinion were read to parties at the same time. This means that when the assessors were reading over their opinion to parties the chairman had already composed his judgment.

I am of the firm opinion that after reading the opinion of assessors on 17th November, 2021, the matter ought to have adjourned so as to give time to the chairman to consider the opinion of the assessors in his judgment. I subscribe to the model procedure given by my brother Hon. Kilekamajenga, J in the case of **Hosea Andrea Mushongi (Administrator of estate of the late Hosea Mushongi) Vs Charles Gabagambi**, land Cas Appeal No. 66 of 2021 (HC-Bukoba) where he provide a view that after the opinion of assessors have been read, judgment date should be fixed.

From the foregoing, I find that it was not proper for the Chairman of the District Land and Housing Tribunal for Maswa to compose judgement before allowing the assessors to read over to parties their opinion. This error renders



the decision and the proceedings a nullity. Since ground No. 3 surrice to dispose of the appeal at hand, I cannot labour to determine the other grounds.

Appeal is thus allowed to the effect that proceedings of Land Application No. 40/2020m of Maswa District Land and Housing Tribunal and the Judgement made thereof are quashed. I order that, if the parties are still interested, an expedited fresh hearing before another chairman and a new set of assessors be commenced. Each part to bear its own cost of this Appeal.

It is so ordered

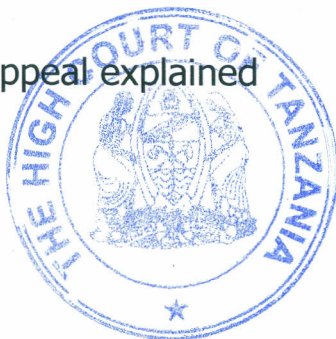
DATED at **SHINYANGA** this 7th October, 2022


L. Hemed
JUDGE

COURT:

Judgment is delivered in the presence of Mr. Emmanuel Botamwa for the respondent also holding brief of Mr. Daud Masunga advocate of the Appellant.

Right of appeal explained




L. Hemed
JUDGE
7/10/2022