THE UNITED REPUBLIC OF TANZANIA

THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MICS. LAND REVISION NO. 4 OF 2021

(Originating from the District Land and Housing Tribunal for Manyoni at Manyoni in Land Application No. 18 of 2019)

CATHERINE SIMON..... APPLICANT

VERSUS

MAHONA NGWENGWE.....1st RESPONDENT

DANIEL SAFARI.....2nd RESPONDENT

JUDGMENT

Date of Last Order: 30/08/2022

Date of Judgment: 26/09/2022

Mambi, J.

In the District Land and Housing Tribunal for Manyoni at Manyoni (the DLHT), the first respondent successfully sued the 2nd respondent and his wife the applicant herein (Catherine Simon). Having been aggrieved by the decision of the DLHT, the applicant moved this court to make revision basing on ground of irregularities that she was not heard in the suit land Application No. 18/2019.

When the matter was scheduled for hearing, the parties prayed to argue by way of written submissions. The applicant was represented by the learned Counsel Mr John Chagongo whereas the respondent enjoyed the services of Mr. Salehe.

Before I thoroughly perused the submissions made by both parties, I realized that the proceedings at the DLHT were tainted by irregularities that renders both the proceedings and judgment invalid. It is on the records that the trial tribunal chairperson did not involve the assessors in his decision. The records neither show if the assessors gave their opinion nor show if the chairperson considered the opinion of the assessors. It is trite law that where the chairperson of the District Land and Housing Tribunal sits with the assessors from the beginning to the end, he must record the opinion of the assessors if any. The Chairman is also required to consider the opinion of the assessors if any and such opinion must have been read to the parties.

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. 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.***"

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 declaring the first respondent (who was the applicant) as the lawful owner of the suit land. 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. 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.

My perusal have also revealed that the applicant was not given right to be heard. The chairman in his proceedings just wrote that the applicant who was the second respondent had no objection. In this regard the trial tribunal assumed that the applicant herein admitted that the first respondent was the rightfully owner basing on judgment on admission.

The consequences for the failure to avail a party fair opportunity to be heard was underscored by the Court of Appeal in ***DPP VS.SABINIS INYASI TESHA AND RAPHAEL J.TESHA [1993] T.L.R 237*** where the court held that such denial would definitely vitiate the proceedings. See also ***EMANUEL NAISIKE VS. LOITUS NANGOONYA, MISC.LAND CASE APPEAL NO.22 OF 2011*** High Court at Arusha.

The position of the law with regard to the importance of right to be heard was also underscored in the case of ***MEYYA-RUKWA AUTO***

PARTS & TRANSPORT LIMITED vs. JESTINA GEORGE MWAKYOMA Civil Appeal No.45 of 2000 where the court held that:

> *"In this country, natural justice is not merely principle of common law, it has become a fundamental constitutional right. Article 13(6) (a) includes the right to be heard amongst the attributes of the equality before the law, and declares in part"*
>
> *"Wakati haki na Wajibu wa mtu yeyote vinahitaji kufanyiwa*
>
> *uamuzi wa mahakama au chombo kingine kinachohusika, basi mtu huyo atakuwa na* ***haki ya kupewa fursa ya kusikilizwa***
>
> ***kwa ukamilifu".***

As the right to be heard is the fundamental constitutional right this court finds the importance of referring more cases in this issue. As there are so many authorities that have addressed similar issues, suffices to refer the case of ***ABBAS SHERALLY & ANOTHER VS. ABDUL S.H.FAZALBOY Civil Application No.33 of 2002*** which was also referred in ***EMANUEL NAISIKE VS. LOITUS NANGOONYA, MISC. LAND CASE APPEAL NO.22 Of 2011 (supra).*** The Court of Appeal in ***ABBAS SHERALLY & ANOTHER VS. ABDUL (supra)*** reiterated that:

> ***"....That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the***

party been heard, *because the violation is concerned to be a breach of natural justice."*

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 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 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 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 revision.

For the reasons given above, I nullify the proceedings and judgment of the District Land and Housing Tribunal for Manyoni at Manyoni in Land Application No. 18 of 2019 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 Singida 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.

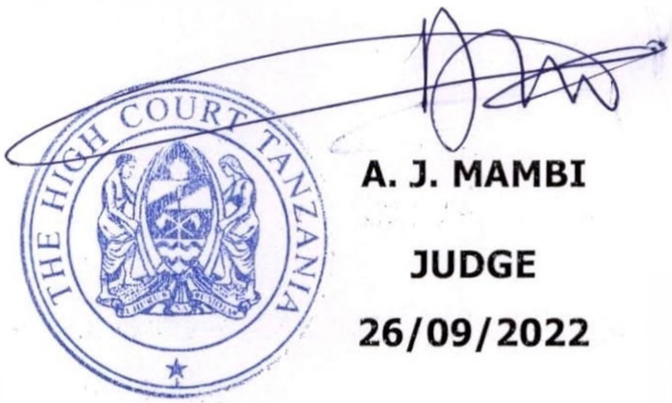
Order accordingly.

A. J. MAMBI

JUDGE

26/09/2022

Judgment delivered in Chambers this **26th** day of **September, 2022** in presence of all parties.

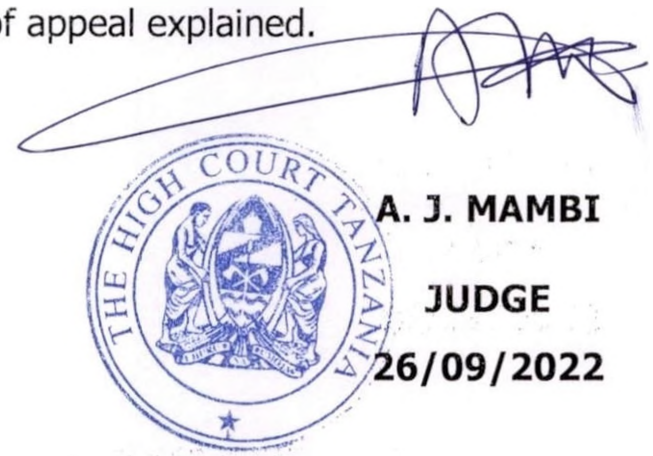


A. J. MAMBI

JUDGE

26/09/2022

Right of appeal explained.



A. J. MAMBI

JUDGE

26/09/2022