IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA TANGA DISTRICT REGISTRY

AT TANGA

LAND APPEAL NO. 17 OF 2022

(Arising from Land Appeal No. 49 of 2021 of the District Land and Housing Tribunal for Tanga, originating from the Land Dispute No. 06/2021 of Pongwe Ward Tribunal)

SADI MBARAKA SADI.....APPELLNT

-VERSUS-

MWANAIDI HAMISI BULELE..... RESPONDENT

JUDGMENT

Date of last order: 03/11/2022 Date of judgment: 10/11/2022

AGATHO, J:

This is a second appeal by the Appellant. He approached this Court by way of appealing from the District Land and Housing Tribunal (DLHT) of Tanga where he had his appeal from Pongwe Ward Tribunal dismissed for lacking merit. Briefly the background is that the Appellant sued the Respondent at Pongwe Ward Tribunal where he claimed his plot was invaded by the Respondent. The trial ensued and it ended in favour of the Respondent. That aggrieved the Appellant who appealed to Tanga DLHT where his appealed was dismissed for want of merit. That decision irked him, and he appealed to this Court on the following grounds:

 That the Appellate Tribunal erred in law and in fact observing that the Appellant herein was represented by Advocate who agreed to dispose the said appeal by way of written submission while he was unrepresented at the early stage of the appeal.

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- The Appellate Court (sic) erred in law and in fact for failure to consider observations raised by the Appellant in respect of the irregularities appeared in the proceedings and judgment of the Ward Tribunal.
- 3. The Appellate Court (sic) erred in law and fact for holding that the disputed land belongs to Respondent without proof on how she came to the possession of the said land and that the Appellant failed to prove his case.

The parties to this appeal were both represented, whereas the Appellant was represented by Mohamed Kajembe, Advocate, the Respondent enjoyed the legal services of Advocate Obediodom Chanjarika. Moreover, the appeal was conducted by way of written submissions. And the parties filed their submissions timely.

The appeal at hand gives rise to three pertinent questions. First whether the DLHT erred in holding that the Appellant was represented by an advocate while he was not represented at the early stage of the appeal. Second, whether the DLHT erred for failing to consider the irregularities in the proceedings and judgment of the Ward Tribunal pointed out by the Appellant. And finally, whether DLHT erred in holding that the disputed land belongs to the Respondent without proof of how she came to possession of the said land and that the Appellant failed to prove his case.

To begin with the first ground of appeal is without merit. I reject that ground of appeal even if the advocate was not engaged at early stage of the appeal at the DLHT. That is because not being represented at the early stage of the appeal at the appellate tribunal does not mean the Appellant was prejudiced or there is any allegation that the DLHT denied the Appellant to be represented by and advocate at the early stages of his appeal. Therefore, the allegation that the DLHT held that the Appellant was represented at the early stages of the appeal even if that was true in my view that was not prejudicial. It was a slip of a pen. Moreover, if issue



was a pertinent point of law the Appellant's advocate could have moved the court to vacate its orders unless the matter was closed, or it was at the ruling or judgment stage.

The second ground of appeal was on irregularities of the proceedings and judgment of the Ward Tribunal. Regarding the irregularities of the proceedings at the Ward Tribunal which in my view were fatal, the DLHT did not bother to inquire or examine them despite being moved on the same under the pretext that the matter was at final submissions. In Ex Police No E-5812 PC Renatus Itanisa v the IGP & Another, Civil Appeal 147 of 2018 CAT at Dar es salaam at page 6 it was held that it is a settled principle of law that a legal point may be raised at any stage even at appellate stage. I have gone through the record of proceedings of the Ward Tribunal and noted that the proceedings were as if the trial was conducted on one day. Moreover, the proceedings at locus in quo where the Ward Tribunal visited are missing. It is unclear whether they were recorded or not. Worse still the judgment of the trial tribunal was not signed. It is not clear who wrote the said judgment. To say the least the proceedings and judgment of the ward Tribunal are nullity. For that matter the 2nd ground of appeal is with merit. It was not proper for the DLHT to ignore the irregularities found in the Ward tribunal's proceedings considering that the said tribunal possess appellate and revisionary jurisdictions aimed at safeguarding justice and straightening of the proceedings. Strange as it may seem the DLHT chairperson was reminded of these irregularities by the members the DLHT but preferred inaction.

The Chairperson stated that the DLHT could not be moved by the claim of irregularities because they were not grounds of appeal. But given the severity of the irregularities I find the chairperson's stand to be a misconception and fundamentally vitiated the whole trial proceedings and decision because the irregularities pointed out were points of law that can hardly be ignored by any

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tribunal that properly applied its mind. The Ward tribunal judgment was neither signed nor dated. And the proceedings at the locus in quo was not recorded. Due to the above irregularities the proceedings of both DLHT and trial tribunal cannot be allowed to stand. Thus, the appeal is found to have merit. There is no need for Court to examine the third ground of appeal as that will be superfluous.

Consequently, the proceedings of both trial tribunal and appellate tribunal are nullified, their judgments are quashed, and orders ensued therefrom are set aside. The Court further orders a fresh and expedited trial be conducted at the Ward tribunal before new set of members.

Given that the faults that triggered this appeal are somewhat attributed to the tribunals, each party shall bear its costs.

DATED at **TANGA** this 10th Day of November 2022.

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U. J. AGATHO

JUDGE

10/11/2022

Court: Judgment to be delivered by the Hon. Aloyce Masua, Senior Resident Magistrate and Acting Deputy Registrar, this 10th day of November 2022 in the

presence of the parties.

U. J. AGATHO



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