

**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.....APPELLANT**

***-VERSUS-***

**MWANAIIDI 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 appeal was dismissed for want of merit. That decision irked him, and he appealed to this Court on the following grounds:

1. 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.



2. 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 an 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

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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 10<sup>th</sup> Day of November 2022.



**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 10<sup>th</sup> day of November 2022 in the presence of the parties.



**U. J. AGATHO**



**JUDGE**

**10/11/2022**

*[Signature]* !!