

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

LAND APPEAL NO. 24 OF 2021

(Originating from Dodoma District Land and Housing Tribunal in Land Application No.
23 of 2017)

ELIKANA DAUDI NGHWALI AND 16 OTHERSAPPELLANT

VERSUS

**THE REGISTERED TRUST OF THE DIOCESE
OF CENTRAL TANGANYIKA (DCT)RESPONDENT**

JUDGMENT

21/07/2022 & 01/09/2022

KAGOMBA, J

Elikana Daudi Nghwali and 16 Others (henceforth “the appellants”) have filed their appeal to this Court to challenge the judgment of the District Land and Housing Tribunal for Dodoma at Dodoma (henceforth “the trial Tribunal”) dated 16th July 2019 which declared the Registered Trustees of the Diocese of Central Tanganyika (DCT) (henceforth “the respondent”) the lawful owner of a parcel of land measuring 100 acres situated at Msisi Village, Mndemu Division in Bahi District (henceforth “the suit land”).

The appellants have raised two major grounds of appeal, which were pleaded in alternative as follows:

1. That, the trial Tribunal’s judgment is bad in law as there is illegality involved in the proceedings intended to be appealed for. The Tribunal proceeded with the case and reached the said judgment while the

application itself was not existing in Court, thus make the judgment to be nullity.

2. In alternative;

- (a) That, trial Tribunal erred in law and fact for declaring the respondent the lawful owner of the suit land without considering the weight of evidence given by the appellants.
- (b) That, the trial Tribunal erred in law and fact for passing its judgment relying on totally contradictory evidence given by respondent's witnesses.
- (c) That, the trial Tribunal erred in law and fact for admitting and relying on exhibit "P1" in giving its judgment.
- (d) That, the trial Tribunal erred in law and fact for holding that the graves found in the suit land belong to the respondents' members.
- (e) That, the trial Tribunal erred in law and fact for failure to distinguish between the appellant's land and the respondent's land.
- (f) That, the trial Tribunal erred in law and fact for holding that the trees found in the suit land were planted in 1980's by the respondent.

- (g) That, the trial Tribunal's judgment is bad in law for being bias and contravening the law.

Based on the above grounds, the appellants prayed this Court to allow the appeal, set aside the judgment and orders of trial Tribunal, to declare the appellants lawful owners of the suit land as well as to order the respondent to pay costs of this appeal.

The advocates for both sides submitted their written submissions pursuant to the order of the Court. However, in the course of determining the appeal, I have found serious irregularities in the proceedings of the trial Tribunal particularly with regard to quorum of the Tribunal. Section 23(1) of the Land Dispute Courts Act, [Cap 216 R.E 2019] mandatorily requires that the District Land and Housing Tribunal be comprised of at least a Chairman and not less than two assessors. Section 23(2) provides further that the District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.

Section 23(1) & (2) referred to above provides for such composition in the following terms;

"23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a 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 out their opinion before the Chairman reaches the judgment".

Turning to the proceedings of the trial Tribunal, on various dates, notably 17/1/2018 (page 16 of the typed proceedings) and 18/1/2018 (page 18 of the typed proceedings), the Chairman proceeded with hearing of the suit while having only one assessor, namely J. Magembe. It is on these dates, when key testimonies of PW2 Yona Magunda (on page 19 of the typed proceedings) and PW3 Samson Mangwela (page 23 of the typed proceedings) were recorded.

I have perused the judgment of the trial Tribunal. There is no doubt that the same has been heavily influenced by the testimonies of PW1 Robert Mika Thadayo, a reverend at the Msisi Parish, PW2 Yona Magunda and PW3 Samson Mangwela, the latter being the chairman of Msisi village. It is the said PW3 who tendered exhibit P1 which was again, heavily relied upon by the trial Tribunal. Also, on 22/3/2018 the testimony of PW5 Daudi Tandila was heard, without any assessor being present. The proceedings reveal that the participation of assessors was not fully observed, a fact which contributed to their failure to give opinion as required by the law. Therefore, the proceedings of the trial Tribunal are naturally vitiated. The Court of Appeal in **Sikuzani Saidi Magambo and Another vs Mohamed Roble**, Civil Appeal No. 197 of 2018 (unreported), held;

"On the strength of our previous decisions cited above, we are satisfied that the pointed omissions and irregularities amounted to a fundamental procedural error that have occasioned a miscarriage of justice to the parties and had vitiated the proceedings and entire trial before the Tribunal, as well as those of the first appellate court."

In **Fatehali Manji vs The Republic** (1966)1 EA 343 it was stated that a retrial may be ordered when the original trial was illegal or defective and where the end of justice so required. In this case, as I have demonstrated, there are fundamental procedural errors committed by the trial Tribunal. Since there are undetermined legal rights in contest, I am of considered opinion that this case is fit for retrial for the interest of justice to be met.

Accordingly, I invoke the revisionary powers of this Court under section 43 (1) (a) of the Land Disputes Courts Act (Supra) to quash the proceedings and the entire trial. In lieu thereof I order retrial of this suit by another Chairman with competent jurisdiction.

I further order that the trial be expedited. No order for costs.

Dated at Dodoma this 1st day of September, 2022.




ABDI S. KAGOMBA
JUDGE