

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

AT DODOMA

LAND APPEAL NO. 42 OF 2021

(Arising from the judgment of the District Land and Housing Tribunal for Dodoma,
delivered on 29th September, 2021, by Hon. J.F. Kanyerinyeri in the Application No. 203
of 2018)

BETWEEN

JAFFER NOAH..... APPELLANT

AND

CHARLES CINTIKARESPONDENT

11/10/2022 & 7/11/2022

JUDGMENT

MASAJU, J

The Appellant, Jaffer Noah, through his Memorandum of Appeal made
of three grounds of appeal including the 1st and 3rd grounds thus;

*"1. THAT, the trial District Land and Housing Tribunal for
Dodoma erred in law and facts by denying the Appellant's right
to be heard.*

3. THAT, the trial District Land and Housing Tribunal for Dodoma erred in law and facts by denying the Appellant's right to call his witnesses"

The appeal was heard on the 6th day of September, 2022 in the presence of the parties and their learned counsels Mr. Mohamed Chondo and Ms. Nkamba Mshuda for the Appellant and Respondent's respectively who argued for, and against the appeal accordingly.

There is no doubt that the Respondent's case then Applicant, was fully heard before the trial tribunal and the Appellant then Respondent was heard on the 19th day of August, 2020 and his defence case was adjourned for further hearing on another date. After several adjournments the defence case was again scheduled for hearing on the 16th day of June 2021 but the hearing couldn't take off because the learned counsel for the Appellant/Respondent who appeared for him on that day had just been engaged on that particular day and sought adjournment for well informed appearance before the tribunal. The defence case was adjourned for hearing on the 17th day of August, 2021. On that particular date the Appellant did not enter appearance before trial tribunal because he was indisposed and he so informed the trial tribunal in writing, which letter thereof was received and stamped accordingly by the trial tribunal yet still the trial tribunal arbitrarily closed the defence/Appellant's case for want of prosecution and the assessors were invited to give there opinion in writing and that the said opinion to be read to the parties on the 29th day of September, 2021. The said opinion allegedly having been read by the assessors themselves on the 29th day of September, 2021 in the presence of the parties, the judgment was passed accordingly. The record however, does not reflect each assessor

specifically reading his or her own opinion and the substance of his or her opinion. The trial chairman just recorded thus,

"The assessors opinion have been read to the parties by the assessors themselves as they both opined that the applicant is the lawful owner of the same".

This is not the way record of the proceedings is taken. The practice is that each assessor could have been recorded giving the opinion and the substance thereof in the direct speech.

Secondly, the Appellant was denied of the right to be heard, including calling of his witnesses without sufficient cause, for the Appellant had informed the trial tribunal chairman in writing that he was indisposed and the chairman was in receipt of the said letter for leave of absence. The reason given by the trial tribunal for ignoring the letter for leave of absence due to illness leaves much to be desired. The equality of persons before the law and the right to be heard is basic and constitutional pursuant to Article 13(1) (6) (a) of the Constitution of the United Republic of Tanzania, 1977 [Cap 2 RE 2005] as so rightly submitted by the Appellant through the service of his learned counsel, Mr. Mohamed Chondo. Thus, the Respondent's counter submissions and arguments are want of merit. There was therefore no trial of the dispute. The trial concluded in contravention of the right to be heard becomes a nullity. That being the case, by virtue of the revisionary powers of the Court under section 43 (1) (b) of the Land Disputes Courts Act [Cap 216 RE 2019] the trial tribunal's trial, the record of proceedings, the judgment, decree and orders thereof are hereby severally and together nullified, quashed and set aside accordingly.

There shall be trial *de novo* of the dispute before another chairman with a different set of assessors except if the parties reach amicable settlement of the dispute. The parties shall bear their own costs accordingly.


GEORGE M. MASAJU

JUDGE

7/11/2022

