

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

**MISC. LAND APPEAL NO. 65 OF 2020**

(Arising from Land Appeal No. 320 of 2019, before the District Land and Housing  
Tribunal for Dodoma, at Dodoma, Original from Mkonze Ward Tribunal)

**PETER MWAWANGOTO..... APPELLANT**

**VERSUS**

**NOEL MLUNDI ..... RESPONDENT**

*24/10/2022 & 2/11/2022*

**JUDGMENT**

**MASAJU, J**

The Respondent, Noel Mlundi, unsuccessfully sued the Appellant, Peter Mwawangoto in the Mkonze Ward Tribunal. Aggrieved by the decision, the Respondent successfully appealed to the District land and Housing Tribunal for Dodoma at Dodoma, hence the appeal in the Court. The Appellant's Petition of Appeal is made up of seven (7) grounds of appeal.

When the appeal was heard in the Court of the 24<sup>th</sup> day of October, 2022 the Appellant was represented by Mr. Ezekiel Amon, the learned counsel while the layman Respondent appeared in person.

The Appellant submitted on the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal in a consolidated manner that the trial Tribunal heard the dispute with five (5) members on the 20<sup>th</sup> day of September, 2019 and on the 28<sup>th</sup> day of September, 2019 the Tribunal heard the witnesses with four (4) members. That, on the 11<sup>th</sup> day of October, 2019 the trial Tribunal delivered its judgment in the presence of four (4) members and the secretary contrary to section 11 of the Land Disputes Courts Act [Cap 216].

That on that particular day one member, Nowadia Mwagu, who had not taken part in hearing of the dispute was also present, hence not conversant with the dispute. That, the irregularity affects the legality of the trial Tribunal's decision. The Appellant prayed the court to nullify the record of proceedings and the decision of the trial Tribunal.

That, as regards the 6<sup>th</sup> ground of appeal that the 1<sup>st</sup> Appellate Tribunal erred for not giving the reasons of quashing the decision given by the trial Tribunal. That, the non giving the reasons for the decision was contrary to Regulation 20 (1) (d) of the Land Disputes Courts (The District Land and

Housing Tribunal) Regulations 2003, hence illegal decision by the 1<sup>st</sup> appellate Tribunal.

As regards the 7<sup>th</sup> ground of appeal, the Appellant submitted that the assessors' opinion were not read over to the parties before the 1<sup>st</sup> Appellate Tribunal although the said opinions were just consolidated by the 1<sup>st</sup> appellate Tribunal in the Judgement. That, this is contrary to **Tubone Mwambata V. Mbeya City Council** (CAT) Civil Appeal No. 287 of 2007, Mbeya Registry. That, the omission is incurable.

The Appellant prayed the Court to allow the appeal and nullify the proceedings and the decision of both the trial and the 1<sup>st</sup> Appellate Tribunal for being a nullity.

The layman Respondent contested the appeal by adopting his Reply to the Petition of Appeal and adding that the assessors' opinion were read and that the appeal in the Court is time barred. The Respondent prayed the Court to dismiss the appeal.

In rejoinder, the Appellant submitted that, the appeal is not time barred since it is within 45 days. The Appellant prayed the Court to allow the appeal.

That is what was shared by the parties in support of, and against the appeal in the Court.

Indeed, as submitted by the Appellant the trial Tribunal was wrongly constituted contrary to section 14 of the Land Dispute Act [Cap 216] which requires a Ward Tribunal to sit with three members of whom one should be a woman. In the instant case the trial Tribunal sat with five (5) and four (4) members respectively on diverse dates, one of whom was not involved throughout the entire trial hence not conversant with what transpired during trial. Section 11 of the Land Disputes Courts Act, [Cap 216 RE 2019] provides for composition of the Ward tribunal, not the coram of the tribunal, which coram is provided for under section 14 of the Land Disputes Courts Act, [Cap 216 RE 2019].

The decision of the District Land and Housing Tribunal for Dodoma also lacks reasoning contrary to the mandatory requirement of the law in Regulation 20 (1) (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.

The assessors' opinion were also not read over to the parties in the District Land and Housing Tribunal for Dodoma contrary to section 23(2) of the Land Disputes Courts Act [Cap 216] and Regulation 19(2) of the Land

Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 and the decision of the Court in **Tubone Mwambeta V. Mbeya Municipal Council (Supra) and Ameir Mbarak & Azania Bank Corp. Limited V. Edger Kahmili** (CAT) Civil Appeal No. 154 of 2015, Iringa Registry. The assessors opinion can only be seen in the appellate tribunal's original record but the same were not read over to the parties prior to the chairman composing the judgment so as to afford the parties the opportunity to know whether or not the Tribunal had considered the assessors' opinion in reaching the final decision. The Tribunal only alluded to assessors' opinions in her judgment.

The omission goes to the root of the matter as it occasioned failure of justice since there was no fair trial, hence not curable under section 45 of the Land Disputes Courts Act [Cap 216].

By virtue of the revisionary powers of the Court under section 43 (1) (b) of the Land Disputes Act [Cap 216] the trial, record of proceedings, judgment and orders of the trial Tribunal and the District Land and Housing for Dodoma are hereby severally and together nullified, quashed and set aside respectively. There shall be trial "*de novo*" of the land dispute before

the Ward Tribunal before another set of the members of the tribunal except if the parties reach amicable settlement of the dispute.



GEORGE M. MASAJU

**JUDGE**

2/11/2022