

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

LAND APPEAL NO. 14 OF 2020

**(Originating from Land Application No. 06 of 2017, in the District
Land and Housing Tribunal for Njombe, at Njombe).**

BETWEEN

1. ANDERSON MAKEULA.....1ST APPELLANT

2. JACOB LUPENZA.....2ND APPELLANT

VERSUS

ANDREW HONGOLI..... RESPONDENT

JUDGEMENT

10th March & 21st April 2022.

UTAMWA, J.

The appellants, ANDERSON MAKEULA and JACOB LUPENZA were aggrieved by the decision (impugned judgement) of the District Land and Housing Tribunal (DLHT) for Njombe. They are now appealing to this court.

In the DLHT, the respondent (ANDREW HONGOLI) sued the appellants for among other things, a declaration that the sale of the suit premises, a house located at Uyelevale area in Njombe was illegal and for an order restraining the appellants from using the suit premise. The respondent's application was allowed with costs, hence this appeal.

The appeal was based on four grounds of appeal namely;

- i. That, the Tribunal erred in law and facts for disregarding the documentary evidence produced by the appellants.
- ii. That, the Tribunal erred in law and facts in deciding in favor of the respondent by basing on hearsay.
- iii. That the Tribunal erred in law and facts to declare the respondent as the legal owner while he is the administrator of the estate.
- iv. That the Tribunal erred in law and fact to ignore solid and water tight evidence adduced by the appellant and his witnesses on the issue of ownership.

The appellants there, urged this court to quash and set aside the decision of the DLHT with costs for being devoid of merits and to declare the appellants as legal owners of the suit premises.

During the hearing of this appeal, the appellants were represented by Mr. Musa Mhagama, learned advocate whereas the respondent was represented by Mr. Batista Mhelela. However, the learned counsel for the

respondent failed to enter appearance in court. The matter was scheduled for hearing by way of written submissions. The respondent however, failed to file his replying submissions. The court thus, decided to proceed to this judgement by considering the appellants' submissions only.

When this court sat to compose its judgement on appeal, it encountered crucial legal issues that had not been addressed by the parties. It then re-opened the proceedings and ordered the parties to file written submissions addressing it on the following issues: -

- i. Whether or not the Chairman of the DLHT violated the provisions of section 23(2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 (LDCA) and regulation 19(2) of the GN No. 174 of 2003, henceforth the GN in short.
- ii. Whether or not the applicant before the DLHT (now the respondent before this court) offended the provisions of regulation 3(2)(b) of the GN cited supra.
- iii. In case the answers to both preceding issues or to any of them was affirmative, then what is the legal effect of the violation (of the respective law cited above), to the proceedings and the impugned judgment of the DLHT?
- iv. Which orders should this court make depending on the answers to the three preceding issues?

Now, in deciding this appeal, I will firstly consider the above listed issues raised by the court *suo moto* (court issues). If need will arise I will also consider the grounds of appeal listed earlier. This is because; the court

issues touch the jurisdiction of the DLHT. The issue of jurisdiction is, in law, fundamental and must be decided before the court decides any other issue related to the matter before it; see the decision by the Court of Appeal of Tanzania (the CAT) in the case of **Richard Julius Rukambura v. Issack Ntwa Mwakajila and Tanzania Railways Corporation, CAT, Mza Civil Applicatin No. 3 of 2004, at Mwanza** (Unreported).

Regarding the court issues, the counsel for the appellants submitted that, the chairman of the DHLT in fact, violated the provisions of section 23(2) of the LDCA and Regulation 19(2) of the GN. He cited the case of **Zubeda Hussein Kayagali v Oliva Gaston Luvakule & Tanu James Gwoma, Civil Appeal No. 312 of 2017** (unreported) to support his contention. He went on to add that, the respondent had also failed to properly describe the suit land as required by Regulation 3(2) of the said GN.

As to which orders should the court make, the applicants' counsel submitted that, since there was violation of law, the same rendered the whole trial, proceedings and impugned judgment a nullity. They should thus, be quashed and set aside as it was held in the case of **Zubeda case** cited above.

Having considered the record, the arguments by the appellants' counsel and the law, I will discuss the court issues one after another. On the first court issue I am aware that, Section 23(2) of the LDCA provides thus:

"(2) The District Land and Housing Tribunal shall be dully constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment".

Regarding regulation 19(2) of the GN, it also guides thus:

"Notwithstanding sub-regulation (1) the Chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessors may give his opinion in Kiswahili".

In the case at hand, the DLHT's record shows that the defence hearing was marked closed on 11th March, 2020. However, it is not shown anywhere that the Chairman required the assessors to give their opinion. Instead, the case was fixed for judgment on 30th April, 2020. The Chairman then proceeded to compose the impugned judgment. In the impugned judgment he only stated that:

"In this application, I sat with two assessors Mr. Ng'winamila and Mrs Mtweve. Having heard this case, they opined that the applicant is the lawful owner of the suit house....."

The sub issue here is whether the passage quoted above alone is a sufficient indication that the provisions of law cited above were complied with by the DLHT in the matter at hand. The CAT has in various cases discussed the legal requirement for assessors' involvement in deciding matters before the DLHT. In the case of **Edina Adam Kibona v Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017** (unreported) the CAT at Mbeya reiterated its position set in the case of **Tubone Mwambete v Mbeya City Council, Civil Appeal No. 287 of 2017** (unreported) and held that:

"In view of the settled position of the law, where the trial has to be conducted with the aid of the assessors.....they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed.....since Regulation 19(2) of the Regulation requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict".

The CAT also underlined this position of law in the cases of **General Manager Kiwengwa Stand Hotel v Abdallah Said Musa, Civil Appeal No. 13 of 2012** (Unreported) and **Ameir Mbarak and Azania Bank Corp Ltd v Edgar Kahmili, Civil Appeal No. 154 of 2015** (unreported).

Owing to the stance of the law just highlighted above and underscored by the CAT in the above listed precedents, the sub-issue posed earlier cannot be answered affirmatively. This is because, the record does not show that the chairman of the DLHT had required the assessors to give their opinion as the law commands. Again, it is not shown in the record that such opinion of assessors were read in court in the presences of the parties. The mere endorsement by the chairman in his impugned judgment cannot thus, be a conclusive indication that the law was observed. Indeed, this was also the emphasis by the CAT in the **Edina case** (supra). I therefore, answer the sub-issue posed above negatively.

Having answered the sub-issue posed above negatively, I also answer the first court issue affirmatively that the Chairman of the DLHT indeed offended Section 23 (2) of the LDCA and Regulation 19 (2) of the GN.

On the second court issue, it is clear that regulation 3(2)(b) of the GN guides essentially that, the description of the disputed land should be sufficient to identify it. This allows courts to make certain and executable orders. I underscored the importance of a proper description of the land in dispute in various cases such as **Iboya Pambe v Kazimoto Msengi and Another, Land Appeal No. 22 of 2018**. In this one, I observed that: -

"In my opinion therefore, the description of the suit land in the matter at hand, was not sufficient enough for determination of the dispute. In fact, the legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the tribunal of a sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. This was intended for an effective determination of the land dispute between the parties. In case of a surveyed land, mentioning the plot and block numbers or other specifications thus, suffices for the purpose. This is because; such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it. However, regarding un-surveyed pieces of land like the one under consideration, specifications of boundaries and or permanent features surrounding the land at issue are very important for purposes of identifying the land from other pieces of land neighbouring it".

The above highlighted position was also underlined in the cases of **Mwanahamisi Habibu and 7 Others v Justin Ndunge Justine Lyatuu (As the administratix of the Estate of the late Justine Aitalia Lyatuu) and 173 Others, Land Case No. 130 of 2018, High Court of Tanzania at Dar es Salaam, Land Division** (unreported) and **Registered Trustees of Masjid Jumuiyatil Islamia Ubungo Kinondoni v Halima A. Kebe and Another, Land Case No. 114 of 2019, High Court of Tanzania at Dar es Salaam, Land Division** (unreported).

In the matter at hand nevertheless, it is evident that the respondent omitted to properly describe the suit property. The applicant's amended application before the DLHT only contained the location and address of the suit property at paragraph 3 as "A house located at Uyelevale area within Njombe town". In my settled view, the application contained insufficient information and did not describe the suit land adequately so as to differentiate it from other houses neighbouring it. The pleadings did not also show that the same was the only house in that said Njombe Town. I consequently answer the second court issue affirmatively that the applicant in fact, offended rule 3 (2) (b) of the GN.

Regarding the third court issue on the legal effect of the violation of the law cited previously, I am settled in mind that, the violation to Section 23(2) of the LDCA and Regulation 19(2) of the GN eroded the jurisdiction of the Chairman of the DLHT in composing the impugned judgment. The entire proceedings of the DLHT and the impugned judgement itself were thus, a nullity. As to the violation of Regulation 3(2)(b) of the GN, the same rendered the application incompetent for the uncertainty of the identity for the land at issue.

In relation to the fourth issue, I am of the firm view that due to the above findings regarding the third court issue on the effect of violating the laws cited earlier, this court has no option other than nullifying the proceedings of the DLHT and setting aside the impugned judgement. Consequential orders should also follow such orders as it will be shown below.

Due to the above reasons I will not consider the grounds of appeal listed above since the findings I have just made on the four court issues suffice to dispose of the entire appeal. I consequently make the following orders: I nullify the proceedings of the DLHT from the date it commenced to receive the evidence from the parties (i.e. on 25/05/2018) to the date when it delivered the impugned judgement (i.e. on 3/06/2020). I further set aside the impugned judgement and the decree extracted therefrom. I therefore, remit the record of the DLHT to it, where the matter shall be tried afresh by another Chairman and another set of assessors. If parties are still interested, they are advised to pursue their right before the DLHT. Each party shall bear his own costs since the violations of the law discussed above were also contributed by the Chairman of the DLHT. The legal issues that have led to the disposal of this appeal were also raised by the court *suo moto*, hence a justification for apportioning the costs as I have just done above. It is so ordered.



J.H.K Utamwa
JUDGE
21/4/2022

The seal of the High Court of Tanzania is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF TANZANIA" and a star at the bottom.

21/04/2022.

CORAM; J. H. K. Utamwa, Judge.

Appellants: present both.

Respondent: absent.

BC; Ms. Gloria. M.

Court: Judgment delivered in the presence of both appellants, in court, this 21st April, 2022.



J. H. K. UTAMWA
JUDGE
21/04/2022.

The seal of the High Court of Kenya is circular, featuring a central emblem with a scale of justice and a book, surrounded by the text "THE HIGH COURT OF KENYA" and a star at the bottom.