

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

LAND APPEAL NO. 07 OF 2020

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 72 of 2018)

TABIA MLALAMI HAONGA.....APPELLANT

VERSUS

ADMIN LALATA.....1ST RESPONDENT
WASIWASI ADMIN.....2ND RESPONDENT
RIZIKI ADMIN.....3RD RESPONDENT
PIKILAKA MBEMBELA.....4TH RESPONDENT
BARAKA SIMKOKO.....5TH RESPONDENT
EMMANUEL JESTAD.....6TH RESPONDENT
KINUDA MBISA.....7TH RESPONDENT
EVANS SIMKOKO.....8TH RESPONDENT

JUDGEMENT

Date of Last Order: 31/03/2022
Date of Ruling : 11/05/2022

MONGELLA, J.

The dispute at hand concerns a piece of land measuring 7 acres located at Halungu village in Mbozi district. The appellant claiming ownership of the said land instituted proceedings before the District Land and Housing Tribunal for Mbeya at Mbeya (the Tribunal) against the respondents. She



claimed that they had invaded her land, especially the 1st respondent who invaded the land in 2003 and sold part of it to other respondents.

The respondents on their part denied the allegation. The 1st respondent claimed to have acquired the suit land through execution of a court decree, to wit, the Igamba primary court, in Civil Case No. of 2003. The execution was carried out by a court broker whose name was not mentioned. He claimed that the suit land belonged to one Selina Lalata, who is the daughter of the appellant. That, there was a law suit between him and the said Selina Mlalata whereby he won at the primary court and on appeal to the district court, in which the said Selina Mlalata was ordered to pay him T.shs. 400,000/-. Upon failure to pay the said amount, the court ordered for attachment and sale of the suit land, but the same was handed over to the 1st respondent following buyers not turning up. The 1st respondent conceded to have sold part of the farm to the rest of the respondents.

The Tribunal decided in favour of the respondents on the ground that the land was acquired through execution of a court decree rendering it with no jurisdiction to entertain the matter. However, it as well proceeded to declare the respondents lawful owners. Aggrieved by the decision, the appellant preferred the appeal at hand on six grounds. However, for reasons to unfold shortly, I shall deal first with ground five and if need be deliberate on the rest of the grounds.

Under ground five, the appellant claims that the opinions of assessors were not pronounced by themselves before the parties. Through written



submission filed by his legal counsel, Mr. Justinian Mushokorwa, it was argued that the Tribunal proceeding shows that on 14/12/2019 a date was set for the assessors to present their opinions on 16/12/2019. However, on this date nothing happened until 25/03/2021 when judgment was delivered. The case of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017, (CAT at Mbeya, unreported) was cited in support of her argument that the opinion of assessors ought to be filed in writing and presented by the assessors before the parties. Mr. Mushokorwa, still referring to the same case added that the failure to involve assessors in adjudicating the matter is a serious irregularity vitiating the entire proceeding. He prayed for the Court to vitiate the proceeding and order retrial before another set of assessors and chairman.

The respondents, through written submission filed by their legal counsel, Ms. Grace Sweetbert, opposed this ground of appeal. It was argued in the submission that as per original records, the hearing was concluded on 14th November 2019 and the trial Chairman invited the assessors to give their opinion in writing before delivery of judgment. Ms. Sweetbert contended that the opinion was availed to the parties on 16th December 2019 by the assessors and judgment was to be read on 30/01/2020. However, she said, the judgment was not read until 25/02/2020 and not on 25/03/2020 as claimed by the appellant. She had a stance that the claim by the appellant that the opinion was never read by the assessors themselves being speculated and needs to be proved. She called for the Court to look into the original case file as she contended that what appears in the typed proceeding is a mistype/typographical error whereby the events were mixed up.



I have given the arguments by the parties due consideration. With regard to involvement of assessors, I am of the view that the record must speak for itself. In essence, Ms. Sweetbert conceded that there is a problem on face or record regarding involvement of assessors in the typed proceedings as explained by Mr. Mushokorwa. Her only defence is that that was a typing error. She urged the Court to consider the original/handwritten record. Indeed, I have taken the trouble to go through the hand written record, specifically starting from the session of 14th December 2019.

The handwritten proceedings show that on 14th December 2019 the Tribunal ordered for opinion of assessors to be availed to the parties on 16th December 2019. On 16th December 2019, in accordance with the date written below the orders, it is recorded that the opinion of assessors was availed to the parties and that judgement shall be pronounced on 20th January 2020. However, surprisingly, it is not shown who was present at the Tribunal in that session as there is no Coram recorded. Even the Tribunal Chairman who supposedly made the orders does not appear in the Coram.

In my view, this is a serious irregularity and it in fact supports the appellant's claim that nothing transpired on 16th December 2019. It appears that the orders were just inserted, but whoever did that was not keen enough to insert the Coram as well. In the premises, for interest of justice, the benefit of doubt goes to the appellant. However, in the spirit of the decision by the Court of Appeal in the case of **Livingstone Bartholomeo Urrassa vs. The Republic**, Criminal Appeal No. 334 of 2017



(unreported), I order for the case to be retried from the stage of availing opinion of assessors to the parties whereby the same set of assessors shall give their opinion. Thereafter a fresh judgment shall be composed by the same Chairman or another Chairman in case the presiding Chairman is not available. If the same assessors cannot be procured the matter shall be tried *de novo*.

Considering the matter has been finalised on the ground emanating from a mistake committed by the Tribunal, I make no orders as to costs.

Dated at Mbeya on this 11th day of May 2022.


L. M. MONGELLA

JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 11th day of May 2022 in the presence of the appellant and his legal counsel, Mr. Justinian Mushokorwa and Ms. Grace Sweetbert, counsel for the respondents.




L. M. MONGELLA

JUDGE