

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

LAND APPEAL NO. 89 OF 2021

(From the District Land and Housing Tribunal for Mbeya at Mbeya in Land
Application No. 53 of 2018.)

LETELIMBE TEMBELA.....APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF
CHAMA CHA MAPINDUZI.....RESPONDENT**

JUDGEMENT

Date of Last Order : 24/03/2022
Date of Judgement: 05/05/2022

MONGELLA, J.

The appellant is a registered entity formed by a group of elders in Tembela Ward within Mbeya City. In 2018 the appellant filed a suit in the District Land and Housing Tribunal (the Tribunal) against the respondent over a plot of land harbouring a number of local brew pubs and shops. Both parties claimed ownership of the suit land from 1974 whereby they used to collect rent from owners of the shops and local brew pubs at the area. However, the dispute is said to arise in 2017 showing that the parties existed in harmony before 2017. The Tribunal found the respondent to be



the lawful owner of the suit premises. The decision disgruntled the appellant, hence this appeal on the following five grounds:

1. *That the trial Tribunal erred in fact and law by not considering the best evidence and exhibits adduced by the appellant and the appellant's witnesses during trial.*
2. *That the District Land and Housing Tribunal erred in law and in fact by holding in favour of the respondent despite the weak evidence adduced by him during trial.*
3. *That the trial Tribunal grossly erred in law and facts by not analysing properly the evidence adduced by both parties as a result entered an unjust decision against the appellant.*
4. *That the trial Tribunal erred in law and fact by not reflecting the assessors' opinion in the proceedings.*
5. *That the trial Tribunal erred in law and fact by holding that the respondent owned the suit land since 1974 while the evidence on record reveals that the appellant was the one who occupied the suit land since 1974.*

Both parties were represented. The appellant was represented by Ms. Jenifer Silomba and the respondent was represented by Ms. Caroline Mseja, both learned advocates. The appeal was argued by written submissions.



Ms. Silomba started to address the 4th ground. On this, she found the Tribunal proceedings defective for not reflecting the opinion of assessors. She contended that it is the requirement of the law that in each and every decision by the Tribunal, the assessors must give out their opinion concerning the matter and the said opinion be recorded in the proceedings. She referred to **Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003**. She further argued that the Tribunal proceedings do not show that the assessors were given the opportunity to air out their opinion as required under the law.

She further referred the Court to the case of **Alfred Mwalwiba vs. William Mwakyelu**, Misc. Land Appeal No. 15 of 2018 (HC, unreported); **Bernard Sembula vs. Tabia Mbeveti**, Land Appeal No. 3 of 2020 (HC, unreported); **Dr. Clemence Kalugendo vs. Peter Andrew Athumani**, Civil Appeal No. 92 of 2018 (CAT, unreported); and that of **Emmanuel Oshoseni Munuo vs. Ndemael Rumishael Massawe**, Civil Appeal No. 272 of 2018 (CAT, unreported). She concluded that in these decisions the omission to invite assessors to air their opinion is a procedural irregularity rendering the decision to be null and void. She prayed for this Court to hold as such as well.

On the 5th ground, Ms. Silomba argued that it is clear on record that the appellant was in ownership of the land since 1975 and the respondent claimed interference by the appellant in 2018. She said that the appellant had been in use of the land for 43 years undisturbed, but the Tribunal Chairman neglected the issue of time limitation. That, the respondent was

barred to bring any action after 43 years. She invited the Court to be guided by the principle settled in the case of **Yusuf Same and Another vs. Hadija Yususph** [1996] TLR 347. Considering the authority cited, she urged the Court to consider whether the trial Chairman was right to entertain a matter which was time barred.

The 1st, 2nd, and 3rd grounds were argued collectively. She faulted the Tribunal Chairman for improper analysis of the evidence on record. She claimed that the Hon. Chairman seems to be biased in evaluating and analysing the evidence as he did not consider most of the evidence by the appellant and also disregarded the documentary evidence tendered by the appellant. She contended further that the evidence showed that the appellant was in possession of the land in dispute since 1975 and in 2013 there was an amicable settlement of the dispute whereby the appellant was handed over the land in dispute. Insisting on proper evaluation of evidence, she referred the Court to the case of **Hanna d/o Pondo Kasambala & Stella Kasambala Shoo vs. The Republic**, Criminal Appeal No. 88 of 2017 (unreported). Ms. Silomba concluded that for failure to properly analyse the evidence on record, the Tribunal arrived at a wrong decision. She prayed for the appeal to be allowed with costs.

The respondent on her part opposed the appeal. Replying to the 4th ground, Ms. Mseja vehemently disputed the assertion that the Tribunal assessors were not invited to air their opinion. She found the ground untrue and untenable for reason that the Tribunal complied with the law as enshrined under Regulation 19 (2) of G.N. No. 174 of 2003. On that ground she distinguished all the cases referred to by Ms. Silomba. She invited the



Court to look at page 60 and 61 of the Tribunal's typed proceedings and page 10 of the Tribunal judgment to see for itself. She prayed for the ground to be dismissed with costs.

With regard to the 5th ground, Ms. Mseja supported the Tribunal findings. She did so on the grounds that: **One**, that it was the respondents who first presented the exhibits proving their ownership over the land. She mentioned the exhibits to include, liquor license no. 01495, TRA document dated 18/05/1995, and receipt no. 0053, which were admitted collectively as "Exhibit D1". **Two**, that in 1974 the appellant was still not in existence due to the fact that the appellant was incorporated and registered in 2016 as indicated in "Exhibit P1" the certificate of registration. **Three**, that the appellant's witnesses testified that the appellant came into possession of the land in dispute in 1975 and not 1974, but the respondent established that she came into possession of the land in dispute in 1974.

Ms. Mseja distinguished the case of **Yusuf Same** (supra) referred to by Ms. Silomba arguing that the same is inapplicable in the case at hand for want of existence of the appellant before 2016 when it was established. She further argued that it is cardinal principle that a corporate body cannot own or do anything before its existence. In that respect she referred the case of **Singida Sisal Products & General Supply vs. Rofal General Trading Limited & 4 Others**, Commercial Review No. 17 of 2017 (HC, Comm., Div. at DSM, unreported). She wondered how a corporate body registered in 2016 could own land in 1974. She prayed for the Court to find the ground unmeritorious and dismiss it.



With regard to the 1st, 2nd, and 3rd grounds, Ms. Mseja contended that the Tribunal Chairman analysed and evaluated the evidence on record and there is no any indication of bias in his decision. She further argued that the appellant failed to prove her allegations as required under Section 110 (1) of the Evidence Act, Cap. 6 R.E. 2019. She said that the appellant failed to prove how he came into possession of the suit land. That the appellant only tendered her certificate of registration as a corporate body, but on the other hand, the respondent, who was also the respondent in the Tribunal tendered all necessary evidence to prove its ownership over the suit land. In the premises, she found the Tribunal arrived at a correct decision. She prayed for the appeal to be dismissed with costs.

Ms. Silomba opted not to rejoin on the submission by the respondent's counsel. I shall therefore proceed to deliberate on the grounds of appeal as presented by both counsels and after thoroughly considering their submissions and the trial Tribunal record.

Starting with the 4th ground, I agree with both counsels that the Tribunal is obliged to comply with directions under **Regulation 19 (2) of G.N. No. 174 of 2003** by inviting the Tribunal assessors to air their opinion before composition of judgment. I am as well aware of the settled legal position to the effect that failure to comply with the requirement of the law renders the decision fatally defective. The question therefore to be asked is whether the Tribunal complied with the requirement of the law.



Ms. Mseja argued that the proceedings indicate that the opinion was aired to the parties on 01/06/2020. This would have sufficed as the Tribunal is not obliged to record the summary of the opinion in the proceedings. However, I find the proceedings so irregular on the following observation. On 27th February 2020 the Tribunal ordered for defence hearing (I suppose continuation of defence hearing as it had already started) on 09th April 2020. On 09th April 2020 the defence, through its counsel closed the defence case. The Tribunal ordered for opinion of assessors to be availed to the parties on 28th May 2020 and surprisingly the order appears to be signed on 29th May 2020. Then the record does not show what transpired on 28th May 2020 as ordered by the Tribunal but suddenly the matter appears to have come on 01st June 2020 where the assessors' opinion supposedly was availed to the parties. This appears on both records of the Tribunal, that is, on the typed and written record, it is therefore not a typing error but exactly what transpired in the Tribunal.

In consideration of the circumstances as explained above, I find it difficult to refute the appellant's claim that the opinion was not availed to the parties. In my view, the proceedings appear to have been inserted later. The record in fact speaks for itself. In the premises and for interest of justice, I give benefit of doubt to the appellant in her claim. 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 filed on the ground emanating from the mistake committed by the Tribunal, I make no orders as to costs.

Dated at Mbeya on this 05th day of May 2022.


L. M. MONGELLA
JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 05th day of May 2022 in the presence of the appellant and her legal counsel, Ms. Jenifer Silomba.




L. M. MONGELLA
JUDGE