IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IRINGA SUB REGISTRY)

AT IRINGA

LAND APPEAL NO. 12 OF 2022

(Originating from Application No. 88/20216 of the District Land and Housing Tribunal of Njombe before Hon. M. Musa – Chairperson)

ATUWONEKYE MWENDA ..... APPELLANT

VERSUS

HEZRON MANGULA ..... RESPONDENT

JUDGMENT

18th Oct. 2022 & 31st March 2023

I.C. MUGETA, J:

The appellant preferred the present appeal based on five grounds. However, during hearing he abandoned the rest of the grounds and argued only the 1st and 5th grounds of appeal which are:

1. *That the learned trial District Land and Housing Tribunal Chairman erred in law and in fact for delivering judgment before reading the assessors opinion first.*
2. *That the decision and proceedings of the trial District Land Housing Tribunal is tainted with illegalities and irregularities.*

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The appeal was argued by way of filing written submissions. The appellant was represented by Mr. Amandi Isuja, learned advocate whereas the respondent appeared in person and unrepresented.

In support of the appeal, the learned advocate for the appellant submitted on the two grounds jointly. He argued that the trial tribunal scheduled a date of judgment before pronouncing the assessors' opinion as provided by section 23(1) and (2) of the Land Disputes Courts Act [Cap. 216 R.E 2019].

According to him Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 mandates the Chairman to require every assessor present at the conclusion of hearing to give his opinion in writing before making his judgment. That the assessors' opinion must be in the record and must be read to the parties before the judgment is composed. To buttress his submission, he cited the cases of **Edna Adam Kibona v. Absolom Swebe**, Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania (CAT) at Mbeya (unreported), **Mrs. Timoth Mwakaje v. Rev. Keneth Maganja**, Land Appeal No. 64 of 2019, High Court of Tanzania (HCT) at Mbeya (unreported), **The Registered Trustee KKKT Church Mbugani Chunya v. Febe Mwanampina**, Land Appeal No. 80 of 2018, HCT at Mbeya (unreported).

In opposing the appeal, the respondent contended that the DLHT duly complied with the law as evidenced in the record. He cited the case of **Halfan Sudi v. Abieza Chichili** [1998] TLR 527 which held that a court record is a serious document it should not be lightly impeached. He urged the court to disregard technicalities as provided under Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time. He submitted further that with the introduction of the principle of overriding objective, courts are urged to deal with substantive justice as emphasized in the case of **Rashid Abdallah Dochi v. Leornard Gerald Bura**, Land Case No. 5 of 2019, HCT at Tanga (unreported).

By way of rejoinder, the appellant's counsel reiterated his earlier submissions and added that the principle of overriding objective cannot be used blindly to justify violation of procedures and requirements of law as it was stated in **Mandorosi Village Council & Others v. Tanzania Breweries Limited & Others**, Civil Appeal No. 66 of 2017, CAT at Arusha (unreported).

The issue in this appeal *is whether the assessors were fully involved in the proceedings as required by the law.* The DLHT records show that on

Mugeta

30/05/2017 the matter was adjourned for judgment on 29/06/2017. However, on the day fixed for judgment the tribunal set another date for visiting the suit land and the matter was fixed for judgment on 28/08/2017. The judgment was then read to the parties. Regulation 19(2) of the Regulations requires every assessor to give his opinion in writing. In **Tubone Mwambete v. Mbeya City Council**, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported), it was held that such opinion ought to be read before the parties. The Court held as follows:

> *"since Regulation 19(2) of the Regulations 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 record of the DLHT does not show that the Chairman required the assessors to give their opinion or that the opinion was read to the parties. However the written opinion of the assessors appears on record. Therefore, the assessors gave their opinion in the manner required by law. The same are to be in writing. The only irregularity is that the same was

Mugeta

not read to the parties. In **Tubone Mwambete** (supra) the CAT held that such irregularity vitiates the proceedings. In Tubone's case, however, the CAT did not consider the import of section 45 of the Land Disputes Courts Act [Cap. 219 R.E 2019] (the Act) which provides thus:

> *"No decision or order of the a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or an account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice"*

I am not sure if had the Court of Appeal considered this provision would have still arrived at the same conclusion. On my side, I am of the view that as long as the assessors gave their opinion in writing after the parties have presented their respective evidence, failure to read the opinion did not prejudice any party nor occasioned failure of justice. I hold that view because the importance of reading the same as per the decision in

Tubone's case (supra) is to enable the parties to know the nature of the opinion and whether the chairman considered the same in the decision.

At page 4 of the judgment, the learned tribunal chairperson referred to the opinion of the assessors who had opined in favour of the appellant. However, for reasons stated at page 5 of the typed judgment, he differed with them and found for the respondent. What transpired in this case is akin to what happened in **Edina Adam Kibona's case** (supra). In that case, like here, the assessor's opinion was in the record. However, the record did not reflect that the chairperson required the assessors to give the same. The Court of Appeal in **Edina Adam Kibona** wondered on how they made their way into the record and since they had not been read to the parties, it declared the proceedings a nullity due to that irregularity. However, like in Tubone's case (supra) the Court of Appeal did not consider the effect of section 45 of the Act to such situations. Since in this case I am taking into account the effect of section 45 to the situation, I consider the case of **Tubone** and **Edina Adam** (supra) as distinguishable. The process at the DLHT, in my view, largely complied with the law. Firstly, the opinion is in writing. Secondly, the chairperson considered the same in the judgment. The omission to read the opinion of the assessors to the

Mgeta

parties before judgment was delivered, in my view, is saved by section 45 of the Act. No party, as I have already held, was prejudiced and no failure of justice was occasioned by the omission.

For the foregoing, I find the appeal without merits. I dismiss it with costs.

I.C MUGETA

JUDGE

31/3/2023

Court: Judgment delivered in chambers in the presence of the Mr. Suleiman Kaganda, learned advocate holding brief for Mr. Amandi Isuja, learned advocate for the appellant and the respondent in person.

Sgd: M. A. MALEWO

DEPUTY REGISTRAR

31/3/2023