

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

LAND APPEAL NO. 11 OF 2022.

[Arising from the judgment and decree of the District Land and Housing Tribunal for Tabora in Land Application No. 71 of 2021.]

RAMADHANI JUMA.....APPELLANT

VERSUS

THE VILLAGE COUNCIL OF NGUVUMOJA.... 1ST RESPONDENT

AIRTEL TANZANIA LIMITED 2ND RESPONDENT

.....
JUDGEMENT
.....

Date of Last Order: 21/04/2023

Date of Delivery: 16/05/2023

AMOUR S. KHAMIS, J.

At the District Land and Housing Tribunal for Tabora, Ramadhani Juma unsuccessfully sued the village council of Nguvumoja and Airtel Tanzania Ltd for declaration that he is the lawful owner of the disputed parcel of land and compensation for re-allocating it to Airtel Tanzania Ltd.

A brief history of the dispute is that, Ramadhani Juma claims the piece of land that the 1st respondent allocated to the 2nd respondent for construction of a telecommunication tower in July 2007 belongs to him. Ramadhani Juma claimed to own the land but was away from the village from 1995 to 2002 as he was

remanded in prison. He said that upon released from prison, he found the disputed land had been allocated to the 2nd respondent by the 1st respondent.

The suit was decided in favour of the respondent. Aggrieved by the said decision, Ramadhan Juma preferred this appeal on the following grounds;

1. That the trial Tribunal grossly erred in law and fact for failure to determine each of the issues framed.
2. That the trial Tribunal grossly erred in law and fact in holding that the appellant has failed to establish the case against the respondents and hence the suit land is not the appellant's property.
3. That the trial Tribunal judgment is tainted with illegalities and irregularity for it doesn't show the nature of the evidence presented and names of witnesses who testify during the trial.

When the matter was scheduled for hearing, all parties agreed to dispose it by way of written submissions, and the same was done timely by Mr. Kanani Chombala, Mr. Gasper Nyika advocates for the appellant and the 2nd respondent respectively, as well Ms. Grace Nelson Mwema, learned solicitor for Igunga District Council.

Upon scanning of the trial tribunals records, namely: the proceedings, judgment, and decree thereof, I noted that the trial tribunal had made a visit to the locus in quo on 02/03/019.

I also noticed that the said visit to the locus in quo did not abide by the requisite legal requirements as clearly stated in the

case of **NIZAR M.H VS GULAMALI FAZAL JANMOHAMED [1980]** **TLR 29**, where the CAT inter alia stated that;

*“When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, **the court should attend with the parties and their advocates, if any, and with much each witness as may have to testify in that particular matter...** When the court re-assembles in the courtroom, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated. **Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand or relate to the evidence in court given by witnesses.** We trust that this procedure will be adopted by the courts in future.” [Emphasis added].*

In the case at hand, the trial Chairman conducted a visit at the locus in quo but did not have witness or recorded testimonies of witnesses to address the Court on facts in dispute.

In the recent case of **Sikuzani Saidi Magambo and Kirioni Richard vs Mohamed Roble, Civil Appeal No. 197 of 2018** the Court of Appeal put an emphasis on procedures to be observed in a visit to the locus in quo, thus;

*“Now, in the case at hand, as intimated earlier, at the best record of the Tribunal’s proceedings only indicated that on 3rd June, 2016 the Tribunal conducted a visit at the locus in quo without more. It is **therefore not clear***

*as who participated in the said visit and **whether witnesses were recalled to testify, examined, and/or re-examined**, as no notes were taken.....We are therefore in agreement with both parties that the Tribunal's visit in this matter was done contrary to the procedures and guidelines issued by this Court.....It is, therefore, our considered view that **this was a procedural irregularity on the face of the record which vitiated the trial and occasioned a miscarriage of justice to the parties.**"*

Since the trial Chairman relied on the findings from the visit of the locus in quo as clearly stated at page 3, second paragraph of the impugned judgment, it is my view that the resultant decision of the tribunal is null and void since it was obtained from irregular proceedings and thus cannot stand.

In such a case, I find this is enough reason to dispose the matter as it is a major irregularity that goes to the root of the case.

In the upshot, I nullify the entire proceedings and quash the judgment and decree of the District Land and Housing Tribunal for Tabora.

Parties are at liberty to institute a fresh suit before a competent forum in accordance to law. Since this irregularity was raised suo moto, I make no orders as to costs.

It is so ordered.



AMOUR S. KHAMIS

JUDGE

16/05/2023

ORDER: Judgment delivered in open Court in presence of Mr. Kanani Chombala for the appellant, Mr. Gureni Mapande for the first respondent and holding brief of Mr. N. Kyanga, advocate for the 2nd respondent. Right of appeal explained.




AMOUR S. KHAMIS

JUDGE

16/05/2023