IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 53 OF 2022

(Originating from the decision of the District Land and Housing for Singida at Singida in Land Application No.61 of 2020 dated 1st August, 2022)

RASHIDI SALUM.....APPELLANT

VERSUS

JUMMANNE SAIDI JINGI.....RESPONDENT

15/3/2023 & 20/4/2023

JUDGEMENT

MASAJU, J.

The Respondent, Jummanne Saidi Jingi successfully sued the Appellant, Rashidi Salum for trespass before the District Land and Housing Tribunal for Singida at Singida. Aggrieved by the decision, the Appellant has sought the present appeal in the Court. The Appellant's Petition of Appeal is made up of six (6) grounds of appeal.

When the appeal was heard in the Court on the 15th day of March, 2023, Ms. Mwilongo Tenge and Ms. Nahayo Amos, both the learned

counsels appeared for the Appellant whereas the Respondent was unrepresented.

The Appellant abandoned the 1st and 6th grounds of appeal. He submitted on the 2nd and 3rd grounds of appeal in a consolidated manner that the trial tribunal did not properly evaluate the evidence adduced by parties thereby it wrongly decided in favor of the Respondent. That on the typewritten record of the proceedings of the trial tribunal, the Appellant (DW1) adduced evidence, documentary inclusive, to prove his ownership of the suit land. That, on the contrary as per the typewritten record of the proceedings of the trial tribunal, the Respondent (PW1) and his witness failed to show how he owned the suit land. The Appellant referred the Court to the case of **Hemed Said v. Mohamed Mbili** [1984] TLR 113 wherein it was guided that both parties to the suit can not tie rather the one whose evidences is heavy than that of the other is the one who must win. Thus, the Appellant submitted that his evidence before the trial tribunal was heavier than the Respondent's who was declared the lawful owner of the suit land.

Regarding 4th ground of appeal, the Appellant submitted that the documentary exhibits "P1" and "P2" were not read over accordingly to the trial tribunal upon their admission in evidence. That, such procedure was contrary to the guide in the case of **Geophrey Isidory Nyasio v. The Republic** (CAT) Criminal Appeal No.270 of 2017, Dar es Salaam Registry wherein the Court of Appeal cited with approval its holding in the case of **Jumanne Mohamed and 2 Others v. The Republic** (CAT) Criminal Appeal No. 554 of 2015. That, the said omission thereof has been stated in **Selemani Selemani Mkwavila (Administrator of estates of the late JAFARI JUMA BUDU) v. Agatha Athumani and Ignas Alexander Kimunda** (HC) Land Appeal No. 5 of 2022, Mtwara Registry at page 2 thus;

> *"Failure to read out documentary exhibits after their admission renders the said evidence contained in that documents, improperly admitted and should be expunged from the record".*

The Appellant thus prayed the Court to expunge the said impugned exhibit "P1" and "P2" from the record of the trial tribunal.

As regards the 5th ground of appeal, the Appellant submitted that the trial tribunal erred to hold that the Appellant was aware of revocation, if any, of his tittle to the suit land. That, there was no documentary evidence led to that allegation before the trial tribunal. He argued that under section 45(4) of the Land Act, [Cap 113 RE 2019] the procedure for revocation of the tittle includes service of warning and letter to the person who had allegedly breached the condition of right of occupancy. That, such warning, if any, was not tendered before the trial tribunal. That, according to section 48(1) (i) of the Land Act, [Cap 113 RE 2019] there could have been served, notice of intention to revoke's ownership upon the Appellant but there was no such notice despite PW2's allegation. The Appellant argued further that, as per section 49(1) of the Land Act, [Cap 113 RE 2019] revocation of right of occupancy must be sanctioned by the President of the United Republic of Tanzania and notice of the revocation be published in the Gazette and in one or more of the newspapers circulating in the land subject to revocation. But there was no any documentary evidence to that effect, if any, by PW2, which was tendered and admitted in evidence before the trial tribunal. The Appellant thus submitted that under the circumstances, he was

therefore the lawful owner of the suit land since the same has been allocated to him. The Appellant prayed the Court to allow the appeal, quash and set aside the decision of the trial tribunal and declare the Appellant the lawful owner of the suit land.

The layman Respondent contested the appeal by adopting his Reply to the Petition of Appeal to form his submissions against the appeal before the Court and adding that the suit land belonged to his biological father. That, his exhibits were admitted in evidence and were read out to the trial tribunal accordingly. That, the said exhibits were about correspondences between him and the Singida Municipal Council. The Respondent submitted that he does not know about the alleged notice for revocation intention and notice of revocation. The Respondent argued that his evidence was heavier than the Appellants' and prayed the Court to maintain the trial tribunal's judgement and dismiss the appeal for want of merit.

The Appellant in reply, maintained his submissions in chief. That was all by the parties for, and against the appeal in the Court.

Upon perusal of the record of proceedings of the trial tribunal, the Court has noted procedural irregularity which warrants the Court to not attempt the appeal on merit rather address the irregularity worthy disposing the appeal.

The land application before the trial tribunal was heard by two different chairmen. The first chairman presided over the prosecution case whereas the second chairman presided over the defence case. Through-out the record of proceedings of the trial tribunal on the prosecution part the assessors' names do not specifically appear on the coram part of each day when the land application was being heard. Their names are rather reflected on the cross-examination of witnesses' parts where it reads, thus; *"Assessors qns for clarification"*. Similarly, when the defence case was heard, the assessors' names appeared on the cross-examination of the witness part. Their names are not specifically recorded on the coram part in the entire record of the trial tribunal's proceedings of the defence part. It is only recorded thus, "*wajumbe: wapo"* including on the 11th March, 2022 when the assessors' opinions were allegedly read before the trial tribunal. In-fact the record tells that the assessors' opinions were read in the presences of the

Applicant (the Respondent herein) only. It remains unknown to this Court as to which assessor(s) (whose names are not in the coram) did in fact read himself/herself his/her opinion to the Respondent and why in the presence of the Respondent alone while the judgement was thereafter being postponed to 1/8/2022 when it was finally delivered, that was after more than four months period time. The Court is in awe as to why the record does not reveal the assessors' names severally reading out the opinion as so alleged by the trial tribunal. So, in the absence of the specific names of the assessors being reflected on the coram of the trial tribunal, it can hardly be believed that indeed, the assessors did constitute the coram on diverse days of the trial and did in fact read their written opinions in the presence of the Respondent. After all, the big question is why the opinions were even read in the presence of only one party to the case, and without a just cause evidenced on the record for doing so?

According to section 23(2) of the Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 the coram of the District Land and Housing Tribunal is made up of a Chairman and two

assessors who shall be required to give out their opinion in the presences of the parties before the Chairman reaches the judgement. This is what makes a duly constituted District Land and Housing Tribunal. Thus, it is mandatory that the names of the assessors who make the coram of a particular proceedings in the District Land and Housing Tribunal appear on the record of proceedings and whatever they severally do in the discharge of their duties be accordingly reflected on the record of proceedings. Non-compliance to section 23(2) of the Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 is a fundamental procedure irregularity which cannot be cured by section 45 of the Land Dispute Courts Act, [Cap 216 RE 2019]. The same vitiates the trial tribunal's proceedings, decision, decree and orders thereof. Reference to this be made in the cases of **Edna Adam Kibona v Abosolom Swebe (Shell)** (CAT), Civil Appeal No. 286 of 2017, Mbeya Registry and **Sikuzani Said Magambo & Kirioni Richard v Mohamed Roble** (CAT), Civil Appeal No. 197 of 2018, Dodoma Registry.

By virtue of the revisionary powers of the Court under section 43(1)(b) Land Dispute Courts Act, [Cap 216 RE 2019] the trial tribunal's trial record of proceedings, the judgement, decree and orders thereof are hereby severally and together nullified, quashed and set aside respectively. There shall be a trial "*de novo*" of the land dispute before another chairman with a different set of assessors except if the parties reach amicable settlement of the dispute. The parties shall bear their own costs accordingly.

GEORGE. M. MASAJU

JUDGE

20/4/2023