

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

LAND APPEAL NO. 35 OF 2022

ABUU HUSSEIN SOLOKA..... APPELLANT

VERSUS

HAMFREY ALAY LALI.....RESPONDENT

(Arising from the decision of Kondoa District Land and Housing Tribunal)

(R. S Mandari-Chairman)

Dated 27th May, 2022

In

Land Appeal No.03/2022

.....

JUDGMENT

27th April & 05th June, 2023

MDEMU, J.:

The Appellant one Abuu Hussein Soloka was dissatisfied with the decision of the District Land and Housing Tribunal for Kondoa (the DLHT), in Land Application No. 3 of 2022. The DLHT declared the Appellant herein a trespasser. The Respondent on the other hand was declared the rightful owner of the Suitland. Dissatisfied with the outcome of the DLHT on appeal, the Appellant lodged this appeal on 4th of July, 2022, on the following grounds of appeal:-

- 1. That, the appellate district land and housing tribunal erred in fact and law by deciding in favour of the Respondent herein regardless of the strong evidence adduced by the Appellant during trial before the tribunal compared to the weak and contradictory evidence of the Respondent herein.*
- 2. That, the proceedings and judgment of the appellate district land and housing tribunal are null in the eyes of law.*
- 3. That, the appellate district land and housing tribunal erred in fact and law by nullifying the decision of the Hondomairo land ward tribunal.*

On the 27th day of April, 2023, the appeal was scheduled for hearing. Parties appeared unrepresented, that is, they appeared in person. The Applicant at the inception of hearing, prayed his grounds of appeal be adopted to form part of his submissions. He thereafter submitted that, his evidence was strong because the village chairman went to the area where the tree was and stated that, the tree was his and allowed them to proceed for timber processing. The tree was therefore part of the village properties.

Replying to the appeal, the Respondent faulted the Applicant's submissions by arguing that, he is the proprietor of the land where the tree was. He added that, there are natural and artificial trees, which were planted there. He added further that, the Appellant did cut a tree without his permission. He stressed therefore that, the Appellant had no permit from the ministry of Natural Resources to process timbers. The Respondent therefore has to pay for the tree he harvested.

In rejoinder, the Appellant submitted that, the tree was in the village land and he had the permit to harvest it. The permit and levy paid was tendered in the trial Tribunal.

After going through the record of the District Land and Housing Tribunal, the court has noted some procedural irregularities thus, I shall not attempt the merits of this matter as fronted in the grounds of appeal but rather, focus on the irregularities worthy disposing off this appeal. The record shows that, assessors' opinion were not read to the parties after conclusion of hearing of the dispute contrary to Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003. It is provided as follows on this aspect, thus:-

*"Notwithstanding sub regulation (1) the
chairman **shall, before making his judgment
require every assessor present at the***

conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili."

The above provisions of the law is coached in mandatory terms and was interpreted by the Court of Appeal in **Tubone Mwambeta vs. Mbeya City Council, Civil Appeal No. 287 of 2017** (unreported), thus,:-

"..... since Regulation 19 (2) of the Regulation requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be available in the presence of 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 Tribunal shows that, on the 20th day of April, 2022 after the conclusion of hearing of the appeal, the chairman ordered assessors opinion to be given. The opinion can be traced in the original record of the DLHT. However, the record is silent as to whether or not the said opinion were read to parties before delivery of the judgment. The chairman quoted the opinion of the assessors in his judgment and sided

with them but the same were not read to the parties hence contrary to the law. The pointed irregularity amount to fundamental error which, in my view, occasioned miscarriage of justice to the to the parties.

Given the foregoing, the pointed irregularities vitiate the whole judgment before the DLHT. Accordingly, I proceed to nullity and quash the judgment of the trial tribunal and the resultant orders. The matter is accordingly remitted to the DLHT which should order the Assessors to appear and have their opinion read to parties. Thereafter, the said Chairman should compose a fresh judgment which should take into account opinion of such Assessors. Any party dissatisfied with the fresh judgment composed, may appeal to this court forthwith.

Each party to bear own costs.

It is so ordered



Gerson J. Mdemu
JUDGE
05/06/2023

DATED at DODOMA this 05th day of June, 2023



Gerson J. Mdemu
JUDGE
05/06 /2023