

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

LAND APPEAL No. 12 OF 2023

*(Arising from the District Land and Housing Tribunal for Mara
at Musoma in Land Application No. 117 of 2020)*

OMARY ALLY APPELLANT

Versus

NYANGIGE KISHABA RESPONDENT

JUDGMENT

13.06.2023 & 13.06.2023

Mtulya, J.:

Regulation 20 (1) of the **Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN No. 174 of 2003** (the Regulations) provides for contents of a judgment. The provision was enacted in the following words: *the judgment of the Tribunal shall always be short written in simple language and shall consist of:*

- (a) A brief statement of facts;*
- (b) Finding on the issues;*
- (c) A decision; and*
- (d) Reasons for the decision.*

However, before any judgment of the Tribunal is rendered down, the parties are required to comply with Regulation 12 (3) (b) of the Regulations on the requirement of framing issues in contested matters filed in applications. The law enacted in Regulation 12 (3) (b) of the Regulations also requires chairmen

of Tribunals and learned counsels to lead the parties in framing issues.

In the present appeal, the record shows that the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) was invited to resolve a contest between **Mr. Omary Ally** (the appellant) and **Mrs. Nyangige Kishaba** (the respondent) filed in **Land Application No. 177 of 2020** (the application). The record of the tribunal shows further that on 29th September 2021, the parties with the aid of the chairman of the tribunal had framed two (2) issues, namely: first, *nani mmiliki halalli wa eneo lenye mgogoro*, and second, *stahiki*.

The tribunal then heard the parties and on 19th December 2022, had delivered its judgment, and at page 5 of the decision resolved that: *madai ya mleta maombi sio ya kweli. Hivyo, yamefukuzwa Mahakamani. Kila upande ubebe gharama zake.*

However, the tribunal was silent in replying the two (2) indicated issues framed on 19th September 2021, despite the fact that the learned chairman had displayed the issues at page 4 of the judgement, when he stated that: *katika kufikia hukumu hii Baraza hili lilijiuliza nani hasa mmiliki halali wa eneo hili lenye mgogoro, na stahiki gani zitolewe kwa wadaawa.*

The decision of the tribunal aggrieved the appellant hence preferred a total of eight (8) reasons of appeal in **Land Appeal No. 12 of 2023** (the appeal) lodged in this court. Today when the

appeal was scheduled for hearing, the appellant hired legal services of **Mr. Emanuel Werema**, learned counsel to argue the grounds of appeal. Nevertheless, Mr. Werema had declined to argue all reasons of appeal save for the third reason contending that the tribunal breached Regulation 20 (1) (b) of the Regulations as there is no findings of the raised issues in the judgment of the tribunal delivered on 19th December 2022. Finally, Mr. Werema prayed the proceedings and judgment of the tribunal be quashed in favor of *trial de novo* to a different chairman with new set of assessors.

Replying the submission of Mr. Werema, the respondent, being a lay woman just complained that the appellant is troubling her without good reasons and she has no any bus fares to attend and make follow ups of the application now and then in courts and land tribunals.

I have perused the record, and found that the tribunal had formulated two (2) issues on 29th September 2021, but had declined to produce holding of the same as per requirement of the law enacted in Regulation 20 (1) (b) of the Regulations. This is obvious breach of the law and this court being custodian of the law and right record, it cannot remain mute where there is vivid violation of the Regulations. It will take appropriate steps to rectify the wrong in favor of the Regulations.

In the present appeal, the record displays the breach of the Regulations. However, the law is silent when the breach is directed to Regulation 20 (1) (b) of the Regulations. Mr. Werema thinks that proceedings and judgment of the tribunal be quashed for proper record and the application be remitted to the tribunal to be determined by new and fresh set of chairman and assessors.


However, I do not see any fault in the proceedings of the tribunal in the application to invite such a move. Even the judgment itself contains all necessary ingredients save for holding of the raised issues. I see from the judgment a brief statement of facts and reasons of the decision, even analysis of facts and evidences are at display. In the circumstance of this appeal, it cannot be said the proceedings were at fault.

Having said so and considering interest of justice, I invoke the mandate of this court enacted in section 43 (1) (b) of the **Land Disputes Courts Act [Cap. 216 R.E 2019]** (the Act) and hereby quash the judgment of the tribunal delivered on 19th December 2022 for want of Regulation 20(1) (a)–(d) of the Regulations. That is the practice of courts in our jurisdiction (see: **Maina Mikael & Fourteen Others v. Rukia Amani & Abother**, Land Appeal No. 135 of 2017; **Wilfred Ulomi & Another v. Sinai Village Council**, Land Appeal No. 29 of 2022; and **Kakul Properties Development Ltd v. Maloo & Others** [1990] E.A).

I further remit the application to the tribunal to compose fresh and proper judgment in accordance to the indicated law. The composition must be done by the same chairman within three (3) months from the delivery of this Ruling, without any further delay. I do so without costs as the dispute is back to the tribunal for fresh and proper judgment. Each party shall bear its costs.

It is so ordered.




F. H. Mtulya

Judge

13.06.2023

This Judgement was pronounced in Chambers under the Seal of this court in the presence of the respondent, **Mrs. Nyangige Kishaba** and in the presence of the appellant's learned counsel, **Mr. Emmanuel Werema**.


F. H. Mtulya

Judge

13.06.2023