

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

LAND APPEAL NO.53 OF 2022

*(C/f Land Application No.7 of 2019 in the District Land and Housing Tribunal for
Simanjiro at Orkesumet.)*

NGARE SITAYO.....APPELLANT

Vs

TAYAI TEKoine.....RESPONDENT

JUDGMENT

Date of last order: 26-5-2023

Date of judgment: 15-6-2023

B.K.PHILLIP,J

The appellant herein lodged this appeal challenging the judgment of the District Land and Housing Tribunal for Simanjiro District at Orkesumet (Henceforth "The Land Tribunal"). The grounds of appeal are reproduced verbatim hereunder;

- i) *That trial chairman erred in law and in fact by not weighing and deciding on the strength of the evidence and exhibit tendered by both parties.*
- ii) *That trial chairman erred in law and in fact by giving a judgment without giving reasoning for such decision.*
- iii) *That trial chairman erred in law and in fact by deciding on the suit which was not referred to the ward tribunal.*
- iv) *That trial chairman erred in law and in fact by deciding on the suit which proceedings were tainted with a lot of irregularities.*

A brief background to this appeal is as follows. The Appellant herein was the applicant at the land tribunal. He instituted a case against the respondent herein claiming that the respondent trespassed into his farmland measuring 50 acres located at Namalulu village, in Simanjiro District. After full trial the land tribunal dismissed his application on the reason that he failed to prove his claim and declared the respondent to be lawful the owner of the disputed land. Aggrieved, the appellant lodged the instant appeal.

At the hearing of this appeal the learned advocate Kennedy Kyando appeared for the appellant whereas learned advocate Jeremiah Mjema appeared for the respondent.

This appeal was heard viva voce. Mr. Kyando started his submission by pointing out that he decided to abandon the 1st 2nd and 3rd grounds of appeal thus, submitted for the 4th ground of appeal only. His submission was to the effect that the proceedings at the Land Tribunal were tainted with illegalities on the grounds that **one**, on 10th December 2020 there was change of the presiding chairman in the case. He contended that the case was initially being heard by Hon. Silas who heard the matter up to the completion of the applicant's case but from 10th December 2020 the case was presided over by Hon. Makwandi. He referred this Court to page 17 of the typed proceedings. He further added that no reasons were given for the change of the chairman from Hon Silas to Hon Makwandi. He contended that the law is very clear that when there is a change of the presiding chairman reasons should be indicated in the proceedings for that change. He insisted that failure to indicate the reasons for the change of the chairman is fatal. It renders the proceedings a nullity. **Two**, Mr. Kyando contended that the

proceedings also reveal that there was change of the assessors. That at the beginning of the hearing of the case there were two assessors. These two assessors attended at the hearing of the case up to 24th August 2021. When the case was called for the defence hearing on 22nd September 2021 new assessors were introduced in the case namely Ismail M.Rweibanguti and Joyce I. Ndossi. When the case was called for recording assessors' opinion only one assessor namely Ms. Latifa Matunga appeared before the Land Tribunal, contended Mr. Kyando. Moreover, Mr. Kyando submitted that the proceedings show that the Land Tribunal received the opinion of assessors. In the impugned judgment the chairman stated that he took into consideration the opinion made by Latifa Matuga which were to the effect that the appellant's did not adduce strong evidence whereas Ms Latifa was not in attendance at the hearing of the defence case, contended, Mr Kyando. He was of the view that assessors were not properly involved in the hearing of the case as required in section 24 of the Land Disputes Courts Act. The assessor who gave the opinion at the end of the case was not fully involved in the hearing of the case. He maintained that the assessors' opinion allegedly relied upon by the chairman were not proper.

Three, Mr. Kyando submitted that in reality there was no opinions from assessors. He contended that it is trite law that the court's proceedings shows what transpired in the court. Expounding on this point Mr. Kyando argued that on 26th November 2021 the proceedings indicates that the chairman received opinions from assessors but it is not indicated in the proceedings whether the assessors' opinions were made in writing or orally. He further argued that the assessor's opinion

allegedly received by the chairman are not incorporated/ reflected in the proceedings. The proceedings just indicates that assessors' opinion were read over before the Land Tribunal without specifically recording the details of the said opinions. He was of the view that legally, that is good as no opinions were made by the assessors. To cement his argument he cited the case of **Finca Microfinance Bank vs Julietha Zacharia and Vedasto Kajune, Land case No. 124 of 2020**, (unreported) in which this Court held that the assessors' opinion are supposed to be reflected in the court's proceedings and failure to incorporate assessors' opinion is wrong and fatal.

In rebuttal, Mr. Mjema start his submission by admitting that there were changes of hands of the case file. Hon. Makwandi took over the case from Hon. Silas and the reasons for the change of the chairman are not reflected in proceedings. However, he pointed out that he knew the reason behind the change of the chairman ,to wit; that Hon. Silas was transferred to another work station as Hon. Makwandi informed them orally when he took over the case. He further contended that the said change of chairman did not prejudice the parties in this case and Mr.Kyando did not cite any law which requires the chairman to indicate the reason for the change of hands of the case file. He insisted that no party was prejudiced by the change of the chairman.

With regard to the 2nd issue raised by Mr. Kyando, he submitted that he believes the coram in the typed proceedings appearing on 22nd September 2021 is not correct. There is a mistake since from beginning of the trial up to 23rd November 2021 it is only the coram dated 22nd September 2021 which indicates that the assessors who appeared in at

the hearing were Ismail Loibanguti and Joyce I. Ndosi. He contended that the names of the aforesaid assessors were wrongly recorded.

With regard to the 3rd issue, Mr. Mjema submitted that assessors' opinions were given and received by the chairman. He referred this Court to page 25 of the typed proceedings which indicates that the assessors' opinions were read over before the Land Tribunal. He further added that at page 3 of the impugned judgment the chairman states the reasons on why the Land Tribunal received opinion from one assessor only. He insisted that the chairman took into consideration the assessor's opinion. He added that Ms. Latifa Matuya, the assessor who gave opinion participated in the hearing of the case from beginning to the end. Moreover, he maintained that even if it is assumed that there were some omissions or oversight by the chairman the same did not led to miscarriage of justice. He prayed this appeal to be dismissed. In the alternative, he submitted that if this Court will rule out that the shortcomings pointed out by Mr. Kyando are real and true then, the same were caused by the Land Tribunal and the respondent cannot be blamed in anyway.

In rejoinder, Mr. Kyando reiterated his submission in chief and added that Mr. Mjema does not dispute that the Land Tribunal's coram dated 22nd September 2021 indicates that the assessors who attended before the Land Tribunal were different from the ones who were attending the case from the beginning. He insisted that court's records are normally assumed to be genuine. He maintained that assessors' opinions were not reflected in the proceedings and it was important for the Land Tribunal to give the reasons for the change of the chairman as required under the law.

After carefully analyzing the rival arguments made by the learned advocates as well as perusing court's records, I am of the opinion that the issue for determination here is whether or not the proceedings of Land Tribunal were tainted with fatal irregularities.

With regard with the first concern raised by Mr. Kyando, it is a common ground that there was change of hands of the case file. At the beginning the case file was assigned to Hon. J. Silas who conducted the hearing of the appellant's case from 21st February 2020 when appellant's case started to its completion. When the respondent's case started on 22nd September 2021 Hon. P.J. Makwandi took over the case to its completion and composed the impugned judgment. It is also not disputed that the reason for the change of the chairman is not disclosed in the proceedings as the same are silent though Mr. Mjema claimed that Hon. Makwandi told them orally that he took over the case from Hon Silas because he was transferred to another work station. Now, the pertinent question is; Is the omission to give reasons for change of hands of the case file/chairman fatal?. I inclined to agree with Mr. Kyando that failure to indicate in the proceedings the reason(s) for the change of hands of case file is fatal. The successor chairman was supposed to record the reasons why he took over the case. And it is noteworthy that Mr. Mjema's contention that the successor chairman told them orally why he took over the case cannot be of any help because what guides this court in determination of the appeal when it needs to know what transpired before the Land Tribunal is the court's records nothing else. After all, if Hon Mkwandi felt that he was obliged to inform the parties the reasons for taking over the case, then it was

equally imperative for that reason to be reflected in the court's record. What I am trying to show here is that it was vital for the reasons for change of hands of the case file to be recorded to promote transparency in justice delivery which is crucial in making sure that justice is done and seen to be done. More so, in this case it was imperative for the reasons for change of hands of the case file to be given and recorded because the appellant's case had already been closed.

Having made the above findings, I do not see any plausible reasons to continue with the determination of the remaining issues because whatever findings I will make will not change the consequences for failure to disclose the reason for change of hands of the case file.

In the upshot, I hereby nullify the proceedings of the Land Tribunal and set aside the impugned judgment. This case shall be tried *de novo* before another chairman. I give no order as to costs since the reason behind the nullification of the proceedings was not caused by any of the parties to this appeal. It is so ordered.

Date this 15th day of June 2023



A handwritten signature in blue ink, appearing to read "B.K. Phillip", is written over a circular stamp.

B.K.PHILLIP

JUDGE