

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 24 OF 2022

(Arising from Dodoma District Land and Housing Tribunal in Land Appeal No. 272 of 2018 originating from Bahi Sokoni Ward Tribunal in the Land Case No. 2016 of 2018)

MAPINDUZI ALLY.....APPELLANT

VERSUS

MAKOYE PAULO.....RESPONDENT

JUDGMENT

19th June & 16th August, 2023.

HASSAN, J.

The appellant being aggrieved by the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Land Appeal No. 272 of 2018 originating from Bahi Sokoni Ward Tribunal in the Land Case No. 2016 of 2018, lodged the instant appeal comprising of the following grounds:

- 1. That, the honourable chairman erred in law and in fact for deciding in favour of the respondent without considering that the seller (s) of the land in dispute were not joined in the case.*
- 2. That the honourable chairman erred in law and in fact for deciding in favour of the respondent*

without considering that the Ward Tribunal was not properly composed during hearing and in the date of decision of the case.

- 3. That the honourable chairman erred in law and in fact for deciding in favour of the respondent without considering that the land in dispute is legally owned by the appellant.*
- 4. That the honourable chairman erred in law and in fact for deciding in favour of the respondent basing on weak and wrong adduced by respondent and his witnesses.*

This appeal was heard *ex parte* after the respondent failed to enter appearance when the appeal was called on for hearing. Thus, hearing was set to proceed in his absence. At the hearing, the appellant was represented by Ms. Sarah Ngereza, Learned Counsel.

Before hearing commenced, the court observed some irregularities in the record of proceedings with respect to the involvement of assessors. That is, whether assessors were effectively engaged to give their opinion in the determination of the matter both at the District Land and Housing Tribunal (DLHT) and Ward tribunal. Thus, the said observation prompted the court to invite the party *suo mottu* to address on the issue raised by the court as whether or not assessors gave their opinion as required by the law.

Ms. Sarah, the learned advocate for appellant, while addressing the court, she readily conceded that opinion in assessors were not recorded to form part of the proceedings in the DLHT. She cemented that assessors' opinion were supposed to be in the record of proceedings, and thereafter, be read over to the party (s) before being considered in the judgment.

She added that, it is the procedure of the law that hearing of an application or appeal in the DLHT should be commenced with two assessors who will give their opinion on the matter. She further submitted that, opinion of assessors ought to be recorded to form part of the record of proceedings and then be read over to the parties.

Therefore, since in this appeal, opinion of assessors was not recorded to form part of the proceedings, then, this appeal should be dismissed and remitted to the DLHT to be heard *de novo*.

Having considered the record of proceedings and submission made by the counsel for the appellant, I choose to begin with the position of the law governing adjudication of land disputes before tribunals.

In terms of section 23 (1) of the Land Disputes Courts Act, Cap. 216 R.E 2019, it is well established that adjudication in the DLHT shall be constituted by the chairman and assessors and their role is articulated under subsection (2) of section 23 whereby, it provides that after the trial

is concluded, assessors are mandatorily required to give out their opinions before the chairman delivers the decision.

More so, the manner of which assessors shall give their opinion is governed by Regulation 19 of the Land Dispute Courts Act, (the District Land and Housing Tribunal (Regulations) 2003 which instructs as follows:

"19 (2) Notwithstanding sub-regulation (1), the chairman shall, before making his judgement, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili."

According to the Regulation above, it is clear that the chairman before making the judgment has to require each assessor who is present at the conclusion of the trial to give his opinion in writing which may be in kiswahili language.

Supplementing what is imposed under regulation 19 (1) and (2) of the Land Disputes Courts Act, (the District Land and Housing Tribunal (Regulations) 2003, the Court of Appeal in the case of **Sebastian Kudike v. Mamlaka ya Maji Taka, Civil Appeal No. 274 of 2018**, where it referred the case of **Ameir Mbaraak and Azania Bank Corp Ltd v. Edgar Kahwill, Civil Appeal No. 154 of 2015 (unreported)** held that:

"....it is unsafe to assume the opinions of the assessors which is not on the record by merely reading the acknowledgement of the Chairman in the Judgment. In the circumstances, we are of a considered view that, assessors did not give any opinions for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity"

See also: **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017** and **Edna Adam Kibona v. Absalom Swebe (Sheli) Civil Appeal No. 286 of 2017** (Both Unreported).

On the case at hand, it is on the record of proceeding that when the hearing took off on 04/9/2019, Mr. K. J. Kitundu and R. A. Mamu were appointed as assessors, and who then attended the proceedings. After hearing was concluded, the chairman pronounced the date of judgement on 02/10/2019.

However, there is nowhere in the record of proceedings where the chairman did require assessors to give their opinions in writing as per the regulation 19 (2) (supra). Again, there is no clue in the record of proceedings which shows that assessors were invited to give their opinions, by reading their written opinions (if the same were written in the separate papers) so that parties could hear them and the chairman could have recorded the same, or even for the assessors to submit their

opinion in the separate written paper for the chairman to admit them and thereafter record his acknowledgement for receipt in the proceedings and endorse those documents to form part of the record of proceedings.

In the contrary, what was transpired by the chairman in the judgment is only to acknowledge that, he concurred with the opinion of assessors. Looking at page 3 of the judgment from DLHT he marked as follows:

"I have read the opinion from the wise assessors namely K. J. Kitundu and R. A. Mamu who had similar opinions that the suit land belongs to the respondent herein."

In the premise, as it was said in the case of **Ameir Mbarak And Azania Bank Corp. Ltd v. Edgar Kahwill (Supra)**, it is highly unsafe to assume that opinion of the assessors which is not on the record regardless of the chairman's acknowledgement in the Judgment.

Thus, it is my considered view that, in the event, assessors did not give their opinions for consideration by the chairman in composing the judgment. Therefore, from the authorities above, this omission by the chairman turns to be a fatal irregularity, and as correctly submitted by Ms. Ngereza, the judgment of the DLHT is frivolous.

The Court of Appeal of Tanzania in **Therod Fredrick v. Abdul Samadu Salimu Civil Appeal No. 145/2015** (Unreported) had once struck out the decision on the point that, the record did not contain the views of the assessors who sat in the District Land and Housing Tribunal. Also, in support to that, the case of **Edna Adam Kibona v. Absolom Swebe, Civil Appeal No 286 of 2017** at page 6 para 1 where Regulation No. 19 was referred, the court cemented that, it is important to have in record, the assessors' opinions.

Additionally, observing the records from the Ward Tribunal, it is obvious, that there is misdeed in the conduct of tribunal involving members. That is, members were irrationally interchanged after every hearing date. For instance, on 30/07/2018 when the complainant gave evidence, Coram of the ward tribunal was constituted as follow:

- | | | |
|---------------------|---|------------|
| 1. Eliudi Benjamini | - | Mwenyekiti |
| 2. Naftali Ngongite | - | Mjumbe |
| 3. Piusi Madinda | - | Mjumbe |
| 4. Selina Petro | - | Mjumbe |
| 5. Maulidi Samidia | - | Mjumbe |

Whereas, on 13/08/2018 when the defendant presented her case, she gave evidence and Coram of the ward tribunal appeared to be as follow:

1. Eliudi Benjamini - mwenyekiti
2. Naftali Ngongite - mjumbe
3. Piusi Madinda - mjumbe
4. Maulidi Samidia - mjumbe
5. Lameck Yohana - mjumbe
6. Kajwanga Wajugu - mjumbe
7. Mauchande Mohamed - mjumbe

From these two Coram above, it appears that three assessors were added who were not part of the first session namely Lameck Yohana, Kajwanga Wajugu and Mauchande Mohamed. Also, one assessor, Selina petro was absent from the second sitting.

Again, on 20/08/2018 when witnesses testified, including the 1st, witness of the complainant (Mpanda John), the 2nd witness of the complainant (Jobu Idd) and the 3rd witness of the complainant (Rukia Juma); and also, the 1st witness of the defendant (Jumanne A. Mwasama) Coram of the ward tribunal was constituted as follows:

1. Eliudi Benjamini - mwenyekiti
2. Naftali Ngongite - mjumbe
3. Piusi Madinda - mjumbe
4. Selina Petro - mjumbe
5. Lameck Yohana - mjumbe

Once again, Coram of the ward tribunal changed its shape. Maulidi Samidia who was present in the previous two sittings here is absent together with Kajwanga Wajugu and Mauchande Mohamed, whereas, Selina Petro who was absent in the second sitting returned to the Coram without any justification.

More so, on the date the matter was scheduled for judgment, Coram of the ward tribunal took another shape, that is, it consisted of the chairman and four other members who had composed and signed the judgment as follows:

1. *Eliudi Benjamini* - *mwenyekiti*
2. *Naftali Ngongite* - *mjumbe*
3. *Piusi Madinda* - *mjumbe*
4. *Selina Petro* - *mjumbe*
5. *Maulidi Samidia* - *mjumbe*

Yet again, going by the names as listed herein-above, it is apparent that there are members who were moving in and out of the Coram without vindication. For instance, Selina Petro and Maulidi Samidia came in after missing some of the sittings. Whereas, Lameck Yohana, Kajwanga Wajugu and Mauchande Mohamed were involved in the session midway and then exited the Coram, and no justification was unveiled.

Therefore, based from the above, the whole interchange of the members has affected smooth involvement of members in the proceedings. That said, it is obvious that when the matter was for mediation in the Ward Tribunal, chairman was expected to sit with three members. See section 14 (1) of the Disputes Land Courts Act which provides:

"14 (1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman."

Thus, looking at all sittings from the ward tribunal, it is apparent that the chairman was accompanied by more than three members contrary to section 14 (1) of the Land Disputes Courts. Besides, the said members were changing after every meeting. As a result, since members

were not properly involved, then, it cannot be said that this matter was fairly litigated. That being the case, the proceedings from both Tribunals ought to be a nullity.


Consequently, I nullify the whole proceedings from the Ward Tribunal as well as that of District Land and Housing Tribunal for being borne from legal anomaly. Similarly, I quash and set aside judgment and decree arrived therefrom.

In furtherance, since in the meantime the Ward Tribunal has ceased to entertain fresh application, then, I struck out the appeal and leave the parties at liberty to file a fresh application in the District Land and Housing Tribunal if desired. More so, I make no order as to costs.

It is so ordered.

DATED at **DODOMA** this 16th day of August, 2023.




S. H. HASSAN
JUDGE