

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MBEYA SUB-REGISTRY)

AT MBEYA

LAND APPEAL NO. 72 OF 2023

(Originated from the District Land and Housing Tribunal of Rungwe
at Tukuyu in Land Application No. 26 of 2014)

EKINALA KASULA..... APPELLANT

VERSUS

KASUPINI MWALYAMBWELE.....1ST RESPONDENT

CHARLES MWAKIPAGEME.....2ND RESPONDENT

JUDGMENT

Date of last order: 29/09/2023

Date of Judgment: 11/10/2023

NDUNGURU, J.

In this appeal, the appellant, Ekinala Kasula is challenging the decision of the District Land and Housing Tribunal of Mbeya (herein referred to as the trial tribunal) in Land Application No. 26 of 2014, delivered on 21st day of November 2014. In that trial tribunal, the appellant, Ekinala Kasula sued the

respondents, Kasupini Mwalyambwele and Charles Mwakipageme for invaded and demolished her house located at Katyongoli area within Kajunjumele Ward in Kyela District without reasonable cause.

In the defence, the respondents denied to demolish the appellant's house. They also testified that, the disputed property was demolished by the Court brokers on supervision of the Police Officer under the order of the tribunal.

Having heard the evidence tendered by the both parties, the trial tribunal found that, the respondents' evidence were heavier than the evidence adduced by the appellant. Therefore, the trial tribunal declared the 1st respondent to be the lawful owner of the disputed property.

The appellant first obtained extension of time to file an appeal out of time before this Court, then lodge the present appeal before this Court. In the memorandum of appeal, the appellant raised five grounds of appeal to wit:

- 1. That, the tribunal erred in law in composing judgment without inviting and requiring the tribunal assessors to give their opinion.*

- 2. That, the trial tribunal erred in law for conducting hearing while the tribunal was not well composed hence unjust decision and tribunal did not take into account their opinion.*
- 3. That, the trial tribunal erred in law for failure to join the necessary party one Eva Maloba hence ended to unjust decision.*
- 4. That, the trial tribunal erred in law for failure to evaluate the evidence on record and come up with unjust decision and without giving reason for the said decision.*
- 5. That, the trial tribunal erred in law for relying on weak and contradictory evidence by the respondents and ignoring the strong and unchallenged evidence by the appellant at the trial.*

When the appeal was called on for hearing, Ms. Jennifer Biko, learned advocate appeared for the appellant whereas the respondents were represented by Ms. Beatrice Kessy, learned advocate. The matter was argued orally.

In fact, the counsel for the respondents did not oppose the present appeal and continued to concede the 1st ground of appeal. In addition, she prayed the Court that the case be remitted back for retrial.

In his part, the counsel for the appellant joined hand to the respondents' counsel submissions.

After having gone through the records of the trial tribunal, the 1st ground of appeal and written submissions made by the parties' counsel, the crucial issue for determination is whether or not the trial chairman was not invited the assessors to give their opinion.

For easy of the reference I see it is very important to reproduce the provisions of section 23 (2) of the Land Disputes Court Act (Cap 216 R.E. 2019) provides as follows:

"(2) The District Land and Housing Tribunal shall duly be constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment".

Therefore, it is the law which gives the assessors mandate to give opinion on the verdict before the chairman composes the decision. In other

words, it is mandatory for the chairman of the tribunal to consult the assessors before he reaches the judgment.

Further the Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N. No. 174 of 2003 provides that:

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

However, the record of the trial tribunal at page 6 of the typed proceedings provides that:

ORDER

- Judgment on 07/11/2014
- Parties to attend

Sgd
T. Munzerere
Chairman
31/10/2014

Therefore, the record of the proceedings show that the parties are ordered to appear on the date of the judgment but it is silent as to whether the chairman invited the assessors to give their opinion as required by the law. What is in the record is their written opinion. It is doubtful as to how and when they found the way in the Court record they are to be taken circumspectly.

In my understanding, the same being filed in the absence of the parties therefore it is not easy for the parties to know the nature of the opinion were given by the assessors and whether such opinion has been considered by the chairman in his judgment. The same position is well articulated by the Court of Appeal of Tanzania in the case of **Edina Adam Kibona v Absolom Swebe (Shell)**, Civil Appeal No. 286 of 2017 and **Tubone Mwambete Versus Mbeya City Council**, Civil Appeal No.287 of 2017 (both unreported).

In that event, I will not labor on the remains grounds of appeal as the above discussed irregularities. It is further ordered that the case must be remitted back to the trial tribunal for trial denovo; the matter should be heard by another chairman with a new set of assessors. I make no order as to the

costs on account that the irregularity is done by the tribunal chairman the parties have no hand to that effect.

It is so ordered




D. B. NDUNGURU

JUDGE

11/10/2023