

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**LAND APPEAL NO. 105 OF 2022**

*(Arising from Land Application No. 47 of 2019 before the District Land and Housing Tribunal for Morogoro, at Morogoro)*

**JUMA RAJABU MAJALIWA (*Administrator of the estate of the late HALIMA ISSA MIGALA*) .....APPELLANT**

**VERSUS**

**REHEMA JUMA MIKONZI ..... RESPONDENT**

**JUDGEMENT**

31<sup>st</sup> October, 2023

CHABA. J.

Before the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT/trial Tribunal), the respondent herein, REHEMA JUMA MIKONZE successfully sued the appellant, JUMA RAJABU MAJALIWA (Administrator of the estate of the late HALIMA ISSA MIGALA) via Land Application No. 47 of 2019 for trespassing over un-surveyed land farm measuring 3.5 acres located at Ng'alala area in Malali Village within Mvomero District in Morogoro Region.

At this juncture, it is important to note that, during the hearing of the case before the trial tribunal, the original respondent, HALIMA ISSA MIGALA passed away. Later on, the appellant herein JUMA RAJABU MAJALIWA applied for and was granted the letters of administration upon being appointed by Mikongeni Primary Court, in the District Court of Mvomero within Morogoro

Region, as an administrator of the estate of the Late HALIMA ISSA MIGALA to discharge his legal obligations including handling the conduct of this matter.

Discontented by the decision of the trial DLHT, the appellant appealed to this Court. At the hearing of this appeal, the appellant was represented by Mr. Hassani Nchimbi, learned advocate while the respondent enjoyed the legal services from Mr. Ignas Punge, learned advocate.

For the better appreciation of the matter before this Court and for the sake of narrowing and making the issues involved clear, I find it apt to first give a brief factual background of the matter as hereunder.

The respondent, REHEMA JUMA MIKONZE who was the applicant at the trial tribunal, instituted a Land Case No. 47 of 2019 before the District Land and Housing Tribunal for Morogoro, at Morogoro against HALIMA ISSA MIGALA (who later passed away before giving her evidence on defence) for trespassing over her suit land measuring 3.5 acres located at Ng'alala, Mlali Village within Mvomero District.

She told the trial tribunal that, she is the lawful owner of the disputed parcel of land as she inherited from her late grandmother one, Mwantumu Ramadhani Mnyune in the year 2008. To prove her statement, she tendered at trial, documentary evidence marked as Exhibit P1 and averred that, she was given the said disputed shamba/farm on 10<sup>th</sup> April, 2008. To support and back up her statement, respondent called the following witnesses; PW2, Mr. Abdul Azizi Mohamed and PW3, Mr. Abdallah Juma Mikonzi. At the end of the day, her

story was believed by the trial tribunal, hence concluded that the said shamba/farm was the property of the late Mwantumu Ramadhani who owned it for almost 57 years without interference.

On the other hand, the appellant's version as garnered from his defence testimony shows that, the alleged shamba/farm belongs to the clan of Kitegeta and it has been jointly owned by the whole family of the deceased one Mwanamng'ewe. It is on record that, the appellant applied for and was granted the letters of administration to stand as an administrator of the alleged clan's farm since on 10<sup>th</sup> November, 2013. However, at the hearing of the matter before the trial tribunal, the appellant changed his story. His testimony unveils that, the alleged shamba/farm did belong to him and that he has been cultivating it for about 10 years until the respondent herein sued him at the DLHT. He testified further that, he inherited the said shamba/farm from his parents, and later it was cultivated by Mohamed Dizamire, followed by Hamza Rajabu Majaliwa and finally Halima Issa Migala, the deceased. His testimony got support from DW2, one Rajabu Ally; DW3, Ernest Ano and DW4, one Hasani Ally.

With the above historical background, the trial tribunal believed that respondent's story cast nothing but the truth and finally declared her as a lawful owner of the disputed land. The trial tribunal further granted costs to the respondent and the appellant was issued with perpetual injunction from entering the respondent's shamba/farm. However, as alluded above, the

appellant was dissatisfied with the findings and decision of the trial tribunal, hence preferred the present appeal. To challenge that decision, the appellant has filed the following four grounds of appeal as hereunder: -

1. That, the trial Chairperson erred in law and fact for failure to include the testimony of DW4 without any justifiable reason, hence failed to deliver reasonable judgment.
2. That, the trial Chairperson erred in law and fact for changing assessors during the trial without assigning good reason for so doing.
3. That, the trial Chairperson erred in law and facts for entertaining an issue which was not raised during the trial, hence the right to be heard against appellant was denied.
4. That, the trial Chairperson erred in law and facts for failure to including assessors' opinion in the proceedings.

With the above grounds of appeal, the appellant invited this Court to allow the appeal, quash the proceedings of the trial tribunal and set aside the impugned judgment and decree issued by the trial tribunal. He further craved to be declared as a lawful owner of the disputed suit land and the respondent be condemned to pay costs on appeal and before the trial tribunal.

On her part, the respondent through her reply to the petition of appeal vehemently disputed all grounds of appeal fronted by the appellant. She supported the trial tribunal's decision and prayed the Court to dismiss the appeal with costs, and uphold the decision of the trial tribunal. Moreover, she

prayed that, both costs for this appeal and the trial tribunal be paid by the appellant. In addition, both parties through their pleadings, requested this Court to issue any other orders where the interest of justice so demands.

When the matter was called on for necessary orders on 8<sup>th</sup> November, 2022, both parties appeared in persons and their respective advocates. Mr. Hassani Nchimbi, learned advocate from PANACEA ATTORNEYS entered appearance for the appellant and Mr. Ignas Seti Punge, learned counsel from PJC PREMIER ATTORNEY appeared for the respondent. With the parties' consensus, it was agreed that this appeal be argued and disposed of by way of written submissions. In this regard, the appellant was supposed to file his written submission in chief on or before 23<sup>th</sup> November, 2022, respondent had to file reply to written submission in chief on 6<sup>th</sup> December, 2022 and rejoinder (if any) had to be filed by the appellant on or before 13<sup>th</sup> December, 2022.

On scrutiny of the parties' pleadings, I noticed that both parties filed their respective submissions in chief and reply thereto as ordered by the Court, serve for the appellant's rejoinder which according to the record it was filed on 17<sup>th</sup> February, 2023 beyond the scheduled order, that is 13<sup>th</sup> December, 2023. The appellant's submissions were drawn and filed by Ms. Kanisia Theoford Komba, also learned advocate for and on behalf of PANACEA ATTORNEYS.

Before commencing to argue and submit in support of the appeal, Ms. Kanisia Komba prayed the Court to adopt the petition of appeal and form part of the appellant's submission and averred further that, during submission,

grounds 2 and 4 will be argued jointly, and grounds 1 and 3 will be argued separately.

Submitting in support of the first ground, Ms. Kanisia Komba faulted the finding and decision of the trial tribunal by stating that it erred in law and fact for failure to include the testimony of DW4 without any justifiable reason, hence failed to deliver a reasonable judgment. She highlighted that, the Chairperson failed to record the testimony of DW4, one Hassan Ally in the judgment because in the proceedings the witness was recorded as DW4, however no evaluation of DW4's testimony was reflected in the judgment and there is no any reason justifying the abandonment of such evidence.

On the second and fourth, Ms. Komba contended that, according to the proceedings of the trial tribunal, the same shows that the assessors were changed during trial without assigning any good cause for so doing, hence contravened the governing law. She accentuated that, on 5<sup>th</sup> April, 2019 and 7<sup>th</sup> May, 2019 the case was presided over by Hon. O. Y. Mbega, Chairperson with a set of two assessors namely, Mr. Mpite and Ms. Mngazija. On 22<sup>nd</sup> March, 2021 assessors were Mkama and Nsana and on the 21<sup>st</sup> July, 2021 assessors were Nsana and Mngazija. According to the counsel for the appellant, it appears that the assessors who sat with the Chairperson kept on changing and no reasons were assigned by the trial Chairperson.

On failure to include the assessors' opinion in the proceedings of the trial tribunal, Ms. Komba submitted that looking at the proceedings of the trial

tribunal, it is evident that the judgment contained the opinion of the Chairperson himself and the assessors' opinion was abandoned without assigning any reason(s). To buttress her argument, Ms. Komba referred this Court to the provision of the law under section 23 (1), (2) and (3) of the Land Disputes Courts Act, [CAP. 216 R.E, 2019] and submitted that, the failure by the trial Chairperson to comply with the above provision of the law, renders the proceedings and judgment a nullity. To cement her argument, the learned counsel cited the decision of the Court of Appeal of Tanzania in **Erica Chrisotom Vs. Chrisotom Fabian and Justinian John**, Civil Appeal No. 137 of 2020, (CAT) sitting at Bukoba (unreported) and the case of **Ameir Mbaraka and Azania Bank Corp. Ltd Vs. Edgar Kahwili**, Civil Appeal No. 154 of 2015 (CAT) sitting at Iringa (unreported). She averred that, in the afore-mentioned two cases, the CAT nullified the judgments of the trial tribunal for failure to comply with section 23 of the Land Disputes Courts Act, [CAP. 216 R.E, 2019].

As regards to the third ground, Ms. Komba asserted that, the trial Chairperson erred in law and facts for entertaining new issue of adverse possession raised during the trial without affording the appellant the rights to be heard. She argued that, the effect of not affording the parties with the rights to be heard rendered the whole proceedings, judgment and orders emanating therefrom a nullity. To fortify her contention, she cited the case of **Ramadhani Ngonyani Vs. Eustaki Ngonyani**, Misc. Land Appeal No. 15 of 2018, (HCT) – Land Division, at Dar Es Salaam (unreported). She underlined that, even

though the Hon. trial Chairperson was entitled to raise the point of law *suo motu*, yet had to summon both parties to address the tribunal on such point before delivery of judgment.

In view of the above submission, Ms. Komba prayed the Court to uphold the third ground and further craved the Court to allow the appellant's appeal with costs.

Responding to the appellant's submission, Mr. Punge, learned advocate for the respondent vividly submitted shortly on each ground as follows. He began his submission by praying the Court to adopt his reply to petition of appeal and form part of the respondent's submission. He proceeded to argue on ground one that, the trial tribunal considered and evaluated the evidence tendered by all witnesses, including the evidence of DW4, Mr. Hassani Ally. He went on highlighting that, this being the first Appellate Court is entitled to re-evaluate the entire evidences on record and come up with its own decision as it was stated in the case of **Selle and Another Vs. Associated Motor Boat Company Ltd and Another, [1968] 1. EA. 123.**

As to the 2<sup>nd</sup> and 4<sup>th</sup> grounds, Mr. Punge accentuated that, the trial tribunal was lawfully constituted for purposes of determining the matter before it. He averred that, the assertion by the appellant's counsel that the assessors were changed during trial and failure to include assessors' opinions are unsubstantiated as this requires keen scrutiny in respect of participation and involvement of assessors at the trial before the trial tribunal. He further



conceded the fact that, the counsel for the appellant correctly cited the provision of section 23 of the Land Disputes Courts Act [CAP. 216 R. E. 2019] and stressed that, that is the requirement of the law regarding composition of the trial DLHT when determining the disputes brought before it.

He argued that, section 23 of the Land Disputes Courts Act (supra) is by Regulation 19 (1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, Government Notice No. 174 of 2003 which provides that:

(1) *"The tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgment on the spot or reverse the judgment to be pronounced later;*

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

Mr. Punge underlined that, one pertinent point of law to be noted at this juncture is about the difference between composition and quorum. Section 23 (1) and (2) of the Land Disputes Courts Act (supra), just provides for the general composition of the trial tribunal. On the other hand, section 23 (3) provides for the quorum. He submitted that, the clear meaning of this provision is that, the Chairperson is to be present throughout the trial. In the course of the trial, the trial tribunal can continue and conclude the proceedings

notwithstanding the absence of the original assessors. Where an assessor(s) is/are present at the commencement of any proceedings and is/are subsequently, for any reason, unable to continue to attend, the trial Chairman is allowed to continue hearing and determine the case on merits to its finality.

From the above submission, Mr. Punge asserted that, in the matter under consideration, only one assessor (Jane Mngazija) gave her opinion as the other assessor's contract (Nsana) expired before the conclusion of the trial. He however argued that, Jane Mngazija was present from the commencement of the hearing to the end. In his opinion, this course is proper as per section 23 (3) of the Land Disputes Courts Act (supra) which provides that:

*"Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence."*

In respect of the 4<sup>th</sup> ground, Mr. Punge submitted that, the Chairperson did not raise new issue as alleged by the appellant. He stated that, two issues were framed by the Tribunal, namely, one; Who is the rightful owner of the disputed land, and Two; To what reliefs are the parties entitled to. According

to him, both issues were determined by the trial Chairperson. He stated that, adverse possession was not a complete new issue, but an integral part of the first issue which centers on ownership. To reinforce and strengthen his argument, Mr. Punge cited the case of **Jasson Samson Rweikiza Vs. Novatus Rwechungura Nkwama**, Civil Appeal No. 305 of 2020 (unreported), where the CAT at pages 8 & 9 observed that:

*"We are alive to the time-bound principle of pleadings that each issue framed should be definitely resolved and that a judge is obliged to decide on each and every issue framed to resolve the dispute ..... However, we wish to state that, the above principle is not a rule of the thumb which apply generally to every situation regardless of the circumstances obtaining. In our considered firm position, we are of the view that, the above principle applies where issues framed are independent from each other and not where issues are interdependent like in the instant appeal where the rest of the issues were dependent upon the determination of the first issue in the affirmative.....".*

Finally, the counsel for the respondent submitted that, based on the authorities cited herein above, his arguments, reasons and cumulative effect of all the above, prayed the Court to dismiss the appeal in its entirety with costs on the ground the same is totally without merits.

By way of rejoinder, Ms. Komba reiterated what she submitted in chief. However, as alluded to above, this part of submission I accorded no weight for a reason that it was lodged in this Court beyond the time scheduled by the Court and without obtaining the requisite permission for extension of time to file the same.

Having summarized the parties' submissions and dispassionately considered the rival arguments from both sides, I find that the issue calling for consideration, determination and decision thereon is, whether this appeal has merits or otherwise. But before I dwell on the grounds of appeals and submissions advanced by the parties for and against the instant appeal, I am mindful that this being a first appellate Court, I am duty bound to re-evaluate the entire evidences on record and come up with my own decision. See the case of **Siza Patrice Vs. Republic**, Criminal Appeal No. 19 of 2010, CAT sitting at Mwanza where the Court held:

*"We understand that it is settled law that a first appeal is in the form of a rehearing. As such, the first appellate court has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own finding off act, if necessary".*

Similar principle was uttered by this Court in the case of **Fred Samwel @ Kindumba Vs. Republic**; Criminal Appeal No. 68 of 2021, HCT at Sumbawanga, where the Court held among other things that:

*"This court being the first appellate court, I am in the position of re-evaluating the evidence of the trial court and make my own determination of the same".*

Secondly; it is settled law that, Court records are a serious document and it is presumed that Court records accurately represents the truth of what actually happened or transpired at trial. Hence, it should not be lightly impeached. See the case of **Halfan Sudi Vs. Abieza Chichili [1998] T. L. R 527, wherein the Court of Appeal of Tanzania held: -**

*"We entirely agree with our learned brother, MNZAVAS, JA, and the authorities he relied on which are loud and clear that; "A Court record is a serious document. It should not be lightly impeached.... There is always the presumption that a court record accurately represents what happened."*

Having revisited the principles of law, which I believe will guide me to land safely to final verdict of this case, I will commence my determination of this appeal on the first ground of appeal. The counsel for the appellant, claimed that, the trial Chairperson erred in law and fact for failure to include the testimony of DW4 without any justifiable reason, hence failed to deliver reasonable judgment. She submitted that, the trial Chairperson did not properly evaluate in his judgment the evidence adduced by DW4, one Hassan Ally. She lamented further that; the consequences of such omission render the whole

judgment a nullity. On his part, the counsel for the respondent vehemently opposed this allegation and averred that the evidence adduced by DW4 (Hassani Ally) in particular, was properly considered analyzed and evaluated the trial Chairperson.

On my part, to resolve this first ground, I take trouble to revisit the proceedings of the trial tribunal (hand written proceedings) and also managed to go through the impugned judgment of the trial tribunal dated on 18<sup>th</sup> July, 2022. Having perused the entire pleadings of the trial tribunal and hand written proceedings, I found that on 12<sup>th</sup> April, 2022, DW4 testified as Hassani Ally. However, the judgment of the trial tribunal which had 9 pages had no evidences adduced by DW4. Despite the truth that the evidence of DW4 was not highlighted and evaluated in the impugned judgment, the appellant did not persuade this Court how such piece of evidence was so important to his client case. Even the counsel for the appellant did not tell the Court how the said omission to evaluate the evidence of DW4 in the judgment did occasion a miscarriage of justice to her client, the appellant. In addition, the counsel for the appellant did not explain as to what exactly DW4 testified before the trial Court. For ease of reference and better understanding, I find it apt to quote what DW4 testified before the trial tribunal.

**"12/04/2022**

**"DW4: Jina:**

**Hassani Ally;**

Umri: 40;

Dini: Islam;

Amethibitisha kutoa ushahidi wa kweli.

**"Ninavyojua, shamba bishaniwa pamoja na mengine ni ya ukoo wa Kitegeta. Mtawala wa kwanza alikuwa mzee Mnigoo alitawala miaka mingi, baadae alifuata Mohamed Dizamile, babu yangu, alitawala, baadae akafa, akaja Hamza Rajabu Majaliwa, alitawala baadae akafa, baada ya kifo akaja Halima Issa Migolo katawala baadae akafa, tukamchagua Juma Rajabu Majaliwa, ndiye tunaye mpaka sasa hivi. Mimi pia ni mwana ukoo". [Bold is mine].**

The above piece of evidence did contradict with the appellant's testimony (DW1, Juma Rajab Majaliwa) as transpires in the record of the trial tribunal who on 14<sup>th</sup> March, 2022 testified that he was (is) the lawful owner of the disputed farm. To cut the story short, the evidence of the appellant as garnered from the record of the trial Court shows that:

**"14/03/2022**

**"DW1: Juma Rajab Majaliwa; Jina: Juma Rajab Majaliwa;**

Umri: 70

Dini: Islam;

Amethibitisha kutoa ushahidi wa kweli.

**"14/03/2022**

**"Ninasema hivi, lile ni shamba langu. Nalima kila siku toka karne tumeshazoea. Katika shamba nilienda kwa wazazi wangu, wajomba zangu,**



**Mohamed Dizamile, akaja Hamza Rajabu Majaliwa halafu Halima Issa Migala, nikaja mimi. Halima ni mpwa wangu mama yake alifariki. Eneo lina ukubwa wa ekari mbili kasoro. Kwenye shamba kuna migomba mashimo mawili, mti wa miombo, miembe mitatu. Mipaka eneo lile hupakana na Kasimu Dagela Shabani, juu yuko Ika na Omary Ndevu, Barabara ya Mongwe. Hilo ndilo shamba letu la ukoo wa Kitegeta. Mpaka sasa tunalima hilo shamba, na tunaendelea kulilima. Kiukoo ndiyo hivyo hakuna wa kusema shamba la kwake, yeyote anayekuja lazima anione mimi. Akilima akipata mazao ananiletea. Nimemaliza .....". [Emphasis added].**

Having reviewed and evaluated the evidence of DW4 and DW1 respectively, it is obvious that the evidence of DW4, Hasani Ally which the counsel for the appellant alleged to have been left without being assessed by the trial Chairperson in the impugned judgment, does not support the testimony adduced by DW1, Juma Rajab Majaliwa, appellant herein. In the circumstance, I find that the omission to evaluate the evidence of DW4 (Hasani Ally) saves no purposes in as much as the appellant's case is concerned. Hence, this ground of appeal must fail.

Coming to the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal, Ms. Komba strongly attacked the trial Chairperson that he erred in law and fact for changing assessors during the trial without assigning good reason and for failure to include the opinions of the assessors in the proceedings. On these two points, the counsel stressed that, failure by the trial Chairperson to comply with the legal requirement and



the authorities she cited in a bid to support his argument, rendered the proceedings and judgment a nullity. On his part, Mr. Punge resisted the contention advanced by the counsel for the appellant by accentuating that, no changes of accessors were made for the purposes of determining the case and dispensing justice. He said, the dates complained of by the appellant's advocates were 5<sup>th</sup> April, 2019 and 7<sup>th</sup> May, 2019 where the case was presided over by Hon. O. Y. Mbega, Chairperson who sat with two assessors namely, Mr. Mpite and Ms. Mngazija. However, on 22<sup>nd</sup> March, 2021 and 21<sup>st</sup> July, 2021 the Chairperson presided over the case with different accessors namely, Mr. Mkama and Nsana, and Nsana and Ms. Mngazija, respectively.

I have re-visited the trial tribunal proceedings particularly on the dates complained by the appellant and revealed that, on those days the matter was called on for mention. My findings on this facet discovered that the counsel for the appellant failed to substantiate and convince the Court how his client was prejudiced by having different accessors when the matter was scheduled for mention. In this regard, I have found no injustice occasioned to the appellant when the trial tribunal sat with different accessors on 22<sup>nd</sup> March, 2021 (Mr. Mkama and Nsana) and on 21<sup>st</sup> July, 2021 (Nsana and Ms. Mngazija) while the matter was scheduled only for mention.

The appellant also complained that the accessor's opinion was not recorded in the proceedings of the trial tribunal. Ms. Komba was of the view that, such failure did occasion miscarriage of justice on the appellant's case.

recorded in the proceedings of the trial tribunal. Mr. Kumbi was of the view that such irregularities were contrary to the dictates of the provision of section 23 of the Land Disputes Courts Act [CAP. 216 R. E. 2019].

She also cited the decisions of the CAT and this Court to fortify her argument. On this allegation, Mr. Punge once again resisted the contention and argued that, the trial tribunal accordingly, recorded the opinion of the assessor. As to the question whether or not the provision of section 23 the Land Disputes Courts Act (supra) was complied with by the trial tribunal, Mr. Punge was straight to argue that such provision of the law was fully adhered to.

Having considered the above rival argument regarding the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal, and upon a thoroughly examination and re-assessment of the proceedings of the trial tribunal, I noticed that the opinion of the assessor was clearly recorded in the proceedings, included in the impugned judgment and read it during delivery of the impugned judgment. This piece of evidence is reflected in the proceedings of the trial tribunal that was recorded on the 25<sup>th</sup> May, 2022. It reads as follows: -

**"25/05/2022;**

**Akidi: N/A;**

**Mleta Maombi: Yupo;**

**Mjibu Maombi: Yupo;**

**Baraza:**

*Maoni ya Jane Mngazija ni kwamba mleta maombi ana uthibitisho wa kupewa ardhni na mashahidi wapo lakini mjibu maombi hana uthibitisho wa kupewa shamba na wazazi wake". [Emphasis added].*



From the above extract of the trial tribunal's proceedings, no doubt that the said assessor one Ms. Jane Mngazija gave her opinion and the same was recorded in the proceedings. Why the second assessor one Nsana did not give her opinion, the answer is far-fetched. According to the record, the Hon. trial Chairperson stated and assigned the reason through the impugned judgment at page 9 of the typed judgement by stating that, I quote:

*Mjumbe wa Baraza Nsana makataba wake ulikwisha wakati shauri linaendelea, hivyo kifungu cha 23 (3) cha sura ya 216 ya Sheria kilitumika [The Land Disputes Courts Act].*

Meaning that, when the matter proceeded for hearing, the assessor's tenure's contract expired. Therefore, the provision of section 23 (3) of the Land Disputes Courts Act [CAP. 216 R.E. 2019] was invoked. For ease of reference, section 23 (1), (2) and (3) the Land Disputes Courts Act (supra) provides that:

*(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.*

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



**(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence".**

From the above sub-section (3) of section 23 of the Land Disputes Courts Act, it is apparent that, the controlling provision of the law is clear that, if in the course of any proceedings before the tribunal, **either or both member(s) of the tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence.** In my considered view, the trial Chairperson was right to continue and conclude the present impugned proceedings and judgment in absence of the said assessor one Nsana. Again, this ground of appeal is devoid of merit.

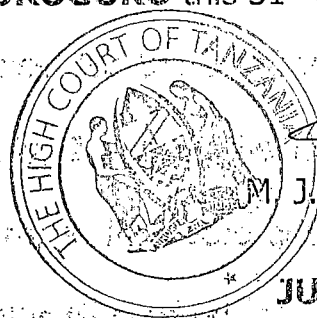
In respect of the 3<sup>rd</sup> ground, the counsel for the appellant faulted the Hon. trial Chairperson that he erred in law and facts for entertaining an issue of adverse possession which was not raised during the trial, hence the right to be heard against appellant was denied. She was of the view that, the consequence of not affording the parties with an opportunity to be heard

renders the whole proceedings, judgment and orders sprang therefrom a nullity. She referred this Court to the decision in the case of **Ramadhani Ngonyani Vs. Eustaki Ngonyani (supra)** to reinforce her contention.

On reviewing the entire proceedings of the trial tribunal, I found that there is no any order in the case file concerning the issue of adverse possession and the counsel for the appellant did not elaborate how his client was affected, and left a lot to be desired by the Court. This ground also lacks merit.

From what I have endeavoured to deliberate herein above, I tend to agree with the counsel for the respondent that, the instant appeal has no merits. Consequently, I uphold the decision of District Land and Housing Tribunal for Morogoro, at Morogoro and proceed to dismiss the appeal in its entirety with costs. It is so ordered.

**DATED at MOROGORO this 31<sup>st</sup> day of October, 2023.**



M. J. Chaba

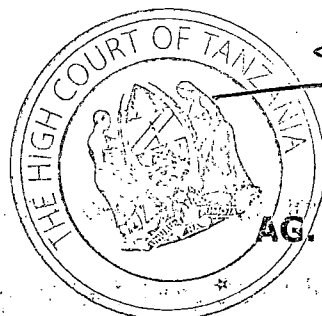
**JUDGE**

**31/10/2023**

**DATED at MOROGORO this 31<sup>st</sup> day of October, 2023.**

**Court:**

Judgement delivered under my Hand and Seal of this Court in Chamber's  
this 31<sup>st</sup> day of October, 2023 in the presence of the Appellant who appeared  
in person, and unrepresented and in absence of the Respondent.



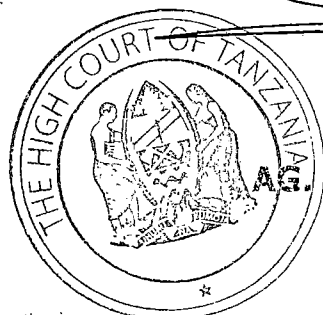
L. B. Lyakinana

**AG. DEPUTY REGISTRAR**

**31/10/2023**

**Court:**

Rights of the parties to appeal to the CAT fully explained.



L. B. Lyakinana

**AG. DEPUTY REGISTRAR**

**31/10/2023**

**Court:**

Rights of the parties to appeal to the CAT fully explained.

**AG. DEPUTY REGISTRAR**

**31/10/2023**