IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

MISCELLANEOUS LAND APPEAL NO. 37 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Dodoma at Dodoma in Misc Land Application No.102 of 2015)

SOSPETER RAMADHANI
DANIEL NGHAMBI
MWALIMU VAILETH SAHALI ..... **APPELLANTS**

VERSUS

MCHIWA CHEDEGO ..... **RESPONDENT**

JUDGMENT

Date of last order: 7/11/2023

Date of Judgment: 20/11/2023

LONGOPA, J.:

The Appellants and Respondent herein were parties before the Ward Tribunal for Mtumba. Respondent sued the Appellants for trespassing to his land. It was alleged that Appellants erected buildings in the Respondent's plot. Further, it was alleged that one of them managed to divert a public way and plant trees on that way making the same shift to the Respondent's piece of land.

On 21/4/2015, the Appellants appeared before the Ward Tribunal for Mtumba and denied allegations by the Respondent. Each of them in compliance to the summons to appear stated how they came into possession of the respective pieces of land. The record of the Ward Tribunal reveals that upon denial of alleged trespass to Respondent's land by the Appellants, the Ward Tribunal fixed 5/5/2015 as the date to visit the ***locus in quo*** and nothing is recorded about what happened on 5/5/2015 except that from 19/5/2015 the matter proceeded without appearance of the Appellants herein. The matter was heard *ex parte* as per order of the Ward Tribunal for Mtumba on 19/5/2015.

It is averment of the Appellants that it was only sometimes in September 2015 when the Appellants were served with ex parte judgement of the Ward Tribunal when the Respondent herein attempted to execute the same.

This prompted the Appellants herein to file an application to challenge the execution of decision of the Ward Tribunal for Mtumba on three orders, namely: (a) Extension of time to file an application for revision; (b) To revise the decision of the Land Case No. 9 of 2015 made by Mtumba Ward Tribunal; and (c) Order for stay of execution against the decision in Land Case No. 9/2015. The trial Chairman rejected the same on account of lack of plausible reasons to grant either of these orders prayed for in the application. The Appellants mounted series of applications before this Court to be heard on the matter. These are Land Case Revision No. 5

of 2016 which was struck out for failure to endorse the name of the advocate who drew it; Misc. Civil Application No. 101 of 2017 for extension of time to file a revision which was granted on 21st June 2019 by this Court and the Land Revision No. 4 of 2019 which was dismissed for want of jurisdiction for revision on 10th November 2020. Finally, the Appellants filed a Misc. Land Application No. 105 of 2020 for extension of time to file an appeal out of time which was granted by this Court on 15th July 2022, hence this appeal.

That being the case, the Appellants filed this appeal on 26th August 2022 in compliance with the Court Order dated 15th July 2022 granting them 60 days to file an appeal. The Appellants have preferred three grounds of appeal, namely:

1. *That the learned Tribunal Chairman erred in law and fact by failure to entertain the Applicants' Application despite the fact that the Ward Tribunal was tainted within a lot of substantive illegalities.*
2. *That, the learned Tribunal Chairman erred in law by giving the decision without involving the opinion of assessors.*
3. *That, the learned Tribunal Chairman erred in law and fact not to entertain the Applicants' Application despite the fact that the hearing at the Ward Tribunal was not done in accord to law.*

On 7th November 2023, when the matter was scheduled for hearing, the First and Second Appellants entered appearance without their learned advocate and the Respondent was present with his advocate one Ms. Faraja Shayo, learned advocate. The First Appellant informed the Court that his advocate one Mr. Fred Kalonga is appearing before Hon Judge Isaya on the ongoing Economic Cases Session and prayed that the matter be heard by way of written submission. The prayer was vehemently resisted by counsel for Respondent and blamed the Counsel for Appellants to use delay tactics on the matter. I granted the prayer on account that Appellants were in Court ready to prosecute their appeal thus it was only fair to allow the matter be heard by written submission as prayed. The parties complied with the order of submission and filed their submission in chief, the reply submission and rejoinder timely as ordered by the Court.

In respect of 1st and 3rd grounds of appeal, it was Appellants' submission that hearing at both Ward Tribunal and District Land and Housing Tribunal were tainted by illegalities and were not in accordance with tenets of the law and procedure. It was averred Mtumba Ward Tribunal after receiving claims by Respondent decided to visit the ***locus in quo***. It was argued that soon after the ***locus in quo*** visit the rest of the procedures were tainted with vulgar illegalities and contrary to the law thus causing injustices to the Appellants.

It was submitted that hearing at the Ward Tribunal for Mtumba violated the Appellants' constitutional right to be heard contrary to section

13(1) of the Ward Tribunals Act, Cap 206 R.E. 2019 as the Appellants were not dully informed on exactly date for hearing instead the Tribunal proceeded *ex parte* against the Appellants. The Appellants were not notified even as to the new date fixed for hearing.

It was Appellants' further submission that DLHT as the first Appellate Tribunal failed to nullify the proceedings concerning *ex parte* decision of the Ward Tribunal. The Appellants cited a case of **Petro Bira Chato versus Hima Hudu Ubaya** (Misc. Land Appeal 47 of 2020) [2020] TZHC 3992 (23 October 2020) in which the Court stated that when the Respondent is not before the Ward Tribunal when the case is set for hearing the Ward Tribunal is not vested with jurisdiction to hear and determine the case in absence of the Respondent.

The Appellants also raised that another irregularity was on pecuniary jurisdiction of the Ward Tribunal as the Tribunal had no mandate to entertain a matter whose value exceeded three million shillings (TZS 3,000,000/=) thus proceedings before the Tribunal was fatal. This is for a reason that section 15 of the Land Disputes Courts Act limits the jurisdiction of the Ward Tribunal to decided matters whose value do not exceed TZS 3,000,000/-.

In respect of the 2nd ground of appeal, it was submitted that the Appellate Tribunal's decision is tainted with illegalities for lack of assessors' opinion contrary to the law. It is further reiterated that the chairman erred

in law and fact by composing judgement without taking into account of the opinion of assessors. It is the Appellants averment that in the ruling of DLHT there is nowhere indicated that Chairman considered the opinion of assessors which is contrary to section 24 of the Land Disputes Courts Act, Cap 216 R.E. 2019 and Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003.

The Appellants referred this Court to a decision in **Haji Shemzigwa vs Selemani Rajabu** (Misc. Land Appeal 87 of 2019) [2021] TZHCLandD 268 (30 June 2021), at page 4 where the Court stated that "it is unsafe to assume the opinion of assessors which is not on the record by merely reading the acknowledgement of the chairman in judgement...and this is a serious irregularity."

It was a further submission of the Appellants that despite the non-binding nature of opinion of the assessors, the Chairman must give reasons for differing with assessors thus failure of the appellate tribunal to consider the opinion of assessors and issuing a judgment and orders contravened the requirements of the law thus execution should be buried and set aside.

Finally, the Appellants invited this Court to use its supervisory powers under Section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 to quash and set aside all proceedings of Mtumba Ward Tribunal and those of District Land and Housing Tribunal for Dodoma as the same are tainted by illegalities.

In response to this submission, the Respondent stated at the outset that Petition of Appeal for the Appellants is challenging the decision and order of the District Land and Housing Tribunal for Dodoma in Misc. Application No. 102 of 2015 which originated from Land Case No. 9 of 2015 before Mtumba Ward Tribunal.

It is further argued by the Respondent that the Appellants' prayer for extension of time was not granted since they failed to adduce sufficient reasons, the order for revision of Ward Tribunal's decision was also futile henceforth the DLHT decided to proceed with hearing of execution after thoroughly scrutinizing that the Appellants herein have failed to adduce sufficient and reasonable grounds for stay of execution.

Respondent submitted also that surprisingly the Appellants decided to submit on issues of irregularities allegedly committed by the Ward Tribunal thus praying for this Honourable Court to revise while those irregularities were not raised or even dealt with by DLHT as the first appellate court as such this is contrary to procedure and laws on appeals.

It was the submission of the Respondent that this Court is not a proper forum to deal with what the Appellants herein have raised issues on irregularities made by the Ward Tribunal. The Appellants had that opportunity at the District Land and Housing Tribunal as the first appellate court.

It was submitted that the Appellants have wrongly moved this Court to exercise powers under section 43(1) (a) and (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 which is for supervisory and revisional powers of the High Court. The Respondent urged this Court not to revise the proceedings of the Ward Tribunal before the same is considered first by the District Land and Housing Tribunal as the appellate court.

Finally, the Respondent stated that they wish to notify this Court that the Respondent cannot respond to any allegations raised by the Appellants since responding to them would amount to agree with what the Appellants have opted which is contrary to the appeals procedures thus Respondent prays not to respond to any grounds due to the fact that the Court has no jurisdiction to deal with what have been submitted by the Appellants.

In rejoinder, the Appellants reiterated that all irregularities were raised before the District Land and Housing Tribunal, but the trial chairman did not address the same despite the Appellants' prayer and arguments in their submission. The Appellants stated that irregularities pointed out before the District Land and Housing Tribunal among others were: absence names, and signature of the members who constituted coram; appellants were no summoned to attend hearing after the visit in locus in quo, no coram of locus in quo and the date set for hearing.

It was further rejoinder that refuting to respond to the submission in chief by the respondent expressly substantiate that they conceded the appeal hence the same should be allowed.

To address these grounds of appeal, I thought it is necessary to address the question of opinion of the assessors first. This directly touches the decision of the District Land and Housing Tribunal for Dodoma that is appealed against. It goes to the jurisdiction of the Tribunal.

Section 23(1) and (2) of the Land Disputes Courts Act provides for the composition of District Land and Housing Tribunal. It states that:

> 23(1) The District Land and Housing Tribunal established under section 22 **shall be composed of one chairman and not less than two assessors**; and
> (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.**

Further, Regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 (GN No 174 of 27/6/2003) reiterates that:

> 19(2) Not withstanding sub regulation (1) the chairman shall, before making his judgment, **require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili**.

It is a mandatory requirement of the law that assessors must give their opinion before the chairman takes a step in composing judgment. It is prerequisite that should be adhered to by Chairman of the District Land and Housing Tribunal for any decision such chairman makes. Non-compliance to the requirement results into the proceedings and decision thereon a nullity.

The Court of Appeal have interpreted these provisions to mean that the opinion must be recorded in the proceedings, read before the tribunal in presence of the parties and in case the chairman in course of composing the decision wishes to differ with opinion of the assessors then he must assign reasons for so doing. In the case of **Tubone Mwambeta vs. Mbeya City Council** (Civil Appeal No. 287 of 2017) [2018] TZCA 392 TanzLII, the Court of Appeal, at page 9 illustratively stated that:

> Therefore, it is important to bear in mind that, the Chairman alone does not constitute the Tribunal. The involvement of assessors as required under the law also gives them mandate to give opinion before the Chairman composes the decision of the Tribunal. The role of the assessors will be meaningful if

they actively and effectively participate in the proceedings before giving their opinion at the conclusion of the trial and before judgment is delivered.

Further, the Court stated at pages 11 -12 that:

> We are increasingly of the considered view that, since Regulation 19 (2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, **such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict**.
>
> As expressly stated under the law, the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the Tribunal, it embraces giving their opinions before the determination of the dispute. **As such, their opinion must be on record**.

All these elements are missing on records of the District Land and Housing Tribunal for Dodoma on Misc Land Application No 102 of 2015. Conspicuously, the ruling dated 2nd June 2016 as well as proceedings of the District Land and Housing Tribunal are silent about the opinion of assessors. There is nothing to indicate that chairman did avail opportunity

to assessors to give their opinion in presence of the parties before he composed the ruling and its drawn order.

In the case of **Sikuzan Saidi Magambo & Another vs Mohamed Roble** (Civil Appeal 197 of 2018) [2019] TZCA 322 (1 October 2019), the Court of Appeal found that absence of the opinion of assessors is fundamental irregularity which goes to the root of the matter thus the Court can dispose a matter on appeal based on this sole ground. It stated at pages 10-11 that:

> It is also on record that, though, the opinion of the assessors were not solicited and reflected in the Tribunal's proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the Tribunal does not show that the assessors were accorded the opportunity to give the said opinion, it is not clear as to how and at what stage the said opinion found their way in the Tribunal's judgement It is also our further view that, the said opinion was not availed and read in the presence of the parties before the said judgement was composed.
>
> On the strength of our previous decisions cited above, we are satisfied that the pointed omissions and irregularities amounted to fundamental procedural errors that have occasioned a miscarriage of justice to the parties and had

vitiated the proceedings and entire trial before the Tribunal, as well as those of the first appellate court.

That being the case, I find that the proceedings of the District Land and Housing Tribunal for Dodoma in Misc Land Application No. 102 of 2015 are tainted with illegality thus the ruling emanating therefrom is a nullity too. Both the proceedings and ruling thereon deserve nothing more than being declared a nullity for failure to accord opportunity to assessors to provide their opinion.

The second aspect of determination is based on illegality of the proceedings both in the Ward Tribunal at Mtumba and the District Land and Housing Tribunal for Dodoma. First, it was argued that the Appellants herein were not afforded an opportunity to be heard as the case before it was heard *ex parte*. Second, it is argued that the Ward Tribunal had no pecuniary jurisdiction given that the value of the land exceeded three million shillings (TZS 3,000,000/=) which is maximum value for its determination. Third, the District Land and Housing Tribunal is faulted for its failure to nullify the proceedings of the Ward Tribunal of Mtumba notwithstanding that the same were marred by irregularities.

On the right to be heard, I shall commence with the procedure of hearing before the Ward Tribunal. The hearing at the Ward Tribunal is governed by section 13 (2) of the Ward Tribunals Act, Cap 206 R.E. 2002. It provides as follows:

13 (1) On the date specified in the summons the parties shall, subject to subsection (3), appear in person before the Tribunal, give their evidence and answer all questions put to them by any member of the Tribunal.

(2) If on the date specified in the summons the complainant does not without reasonable cause, appear, the Tribunal shall dismiss the complaint and it shall not subsequently be brought before it; but if the Tribunal considers that the absence of the complainant is due to a reasonable cause or **if the person complained against is absent, the Tribunal shall adjourn the hearing to some date which it may specify, and inform the appropriate authority of the absence of the person complained against (Emphasis added).**

The provision of the Act in respect of the hearing procedure in Ward Tribunal is silent on the effect of non-appearance of the respondent. Owing to the nature of the Ward Tribunal, framers of the law found it wise that absence of respondent should attract adjournment of the hearing of the matter and inform relevant authority thereto not otherwise. The law does not give any mandate to the Ward Tribunal to proceed with hearing of the matter in circumstances of non-appearance of the person being complained of. However, in respect of absence of the complainant the law is clear that Ward Tribunal is empowered to dismiss the complaint unless reasonable cause is shown by the applicant/complainant.

Also, the Land Disputes Courts Act Cap 216 R.E 2019 is silent on whether a Ward Tribunal can proceed to determine a matter before it in absence of the respondent. That being the case, it appears that framers of the law crafted the same purposely to avoid the Ward Tribunals which are meant to resolve matters amicably to proceed without presence of respondent.

I am persuaded by the decision in **Petro Bira Chato vs Hima Hudu Ubaya** (Misc. Land Appeal 47 of 2020) [2020] TZHC 3992 (23 October 2020), where Mansoor, J stated that:

> If the respondent does not appear before the Ward Tribunal when the case is set for hearing **the Ward Tribunal is not vested with jurisdiction to hear and determine the case in absence of the respondent** and this is why both laws regulating proceedings of the Ward Tribunals i.e. Cap 216 and the Ward Tribunals Act are silent on procedures to be taken by Ward Tribunals when the person complained against is absent during the adjudication of the case...the Ward Tribunals are not vested with powers to determine cases ex parte and to issue an ex parte decree.

A Ward Tribunal traces its jurisdiction to deal with land matter in the Ward Tribunals Act, Cap 206 R.E. 2002 and the Land Disputes Courts Act, Cap 216 R.E. 2019. The absence of a specific provision empowering the Ward Tribunal to hear and determine matters before it in absence of

respondent ousts the jurisdiction of Ward Tribunal from so doing. That is because the Ward Tribunals are quasi-judicial organs that must exercise their powers within boundaries of the law. A Ward Tribunal cannot assume jurisdiction which is not specified by the law. Different from courts of law which have inherent powers to determine matters before them, Ward Tribunal being a quasi- judicial organ lacks those inherent powers.

I have thoroughly perused record of the Ward Tribunal and found that on 21/4/2015 the Appellants appeared before the Ward Tribunal of Mtumba for the first time. The Appellants did respond generally to the allegations that Respondent raised against them. The parties just made statements regarding the dispute. It was not a date of hearing of that matter as the Chairman of District Land and Housing Tribunal for Dodoma dated 2nd June 2016 alludes.

It is a misconception as the record reveals that the matter was scheduled for visit **locus in quo** on 5/5/2015. The record further reveals that on 9/6/2015 the Ward Tribunal did hear the Applicant's (Respondent herein) case by calling witnesses. If the parties appeared and testified on 21/4/2015 the Respondents (Appellants herein) inclusive, how could the same Ward Tribunal revert back to hearing of evidence of Respondent's (Applicant in Ward Tribunal) witnesses given the assertion that parties appeared and testified way back on 21/4/2015. Ordinarily, the Ward Tribunal would not call witnesses of Complainant to testify after the Respondents in that Ward Tribunal have given their evidence.

There is nothing on record regarding what transpired on 5/5/2015 until 19/5/2015 when it is indicated that Respondents were absent without sufficient cause as well as on 9/6/2015 when the witnesses for the Respondent testified in absence of the Appellants. It appears only in the decision of the Ward Tribunal that parties were informed to appear for hearing on 19/5/2015. Further, it is revealed in the decision that Ward Tribunal decided to proceed *ex parte* because of non-appearance of the Appellants.

The main issue at this point is there any evidence on record to substantiate that Appellants herein were informed fully on the hearing dates. The answer is in negative. There is nothing on record indicating that the Appellants were informed that the hearing date is 19/5/2015 or 9/6/2015. Even the document attached to the Judgment indicating to be sketch drawn on 5/5/2015 does not state at all the next hearing date.

Further, there is no evidence on record reflecting that after the judgment was entered on 19/6/2015 the Appellants were informed of the decision. It is until the Respondent approached the District Land and Housing Tribunal for execution when the Appellants realized that there was a judgement against them from the Ward Tribunal.

It is evident, therefore, that Appellants were condemned unheard. They were not afforded any opportunity to hear the witnesses of the Respondent and interrogate those witnesses.

The right to be heard is a constitutional right protected under the Constitution of the United Republic of Tanzania, Cap 2 R.E. 2002. Article 13(6) (a) of the Constitution require that when the rights and duties of any person are being determined that person is entitled to a fair hearing. The right to fair hearing includes the person being afforded opportunity to hear the witness of the other side and availed a chance to question that witness.

This right of fair hearing has been held by the Court to be fundamental for any decision-making organ. In **Danny Shasha vs Samson Masoro & Others** (Civil Appeal 298 of 2020) [2021] TZCA 653 (5 November 2021), at p.5, the Court of Appeal stated that:

> The Court has emphasized time and again that a denial of the right to be heard in any proceedings would vitiate the proceedings. Further, it is also an abrogation of the constitutional guarantee of the basic right to be heard as enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977.

Furthermore, on pages 6 and 7, the Court stated about the effect of non-compliance to this important right that:

> The parties to the land dispute ought to be heard before the trial tribunal so as to uphold one of the attributes of equality before the law. Some of the parties to the land dispute were denied the right to be heard, which renders the proceedings a nullity. As discussed above, even if the trial tribunal and the

> first appellate court reached at a correct decision, still the first appellate court ought to have considered and direct that there was a violation of the right to be heard at the trial tribunal and therefore accord an opportunity to the parties to argue the issue before the same. The first appellate court ought to have ordered a retrial after considering that the parties were denied the right to be heard. This being an infraction which violated the rules of natural justice requiring the tribunal to adjudicate over a matter by according the parties full hearing before deciding the dispute.

This decision of the Court of Appeal emphasizes on the importance of the right to be heard and it calls for an appellate court not to take violation of it lightly. Once an appellate court considers that there is violation of the right to be heard then it is enjoined to nullify the proceedings and set aside orders arising from such proceedings.

In the case of **Hai District Council & Another vs Kilempu Kinoka Laizer & Others** (Civil Appeal 110 of 2018) [2021] TZCA 39 (26 February 2021), the Court restated the effect of non-compliance to the natural justice rule to be heard. It stated that:

> It is not disputed that failure to afford the appellants the right to make rejoinder submissions amounted to denying them the right to be heard. Since that is a fundamental right,

its breach had the effect of vitiating the proceedings because it offended the principle of natural justice.

Having observed that record does not reveal that Appellants were dully informed to appear before the Ward Tribunal of Mtumba, I find that the Ward Tribunal was not entitled to proceed with hearing of the matter one sided as that action violated one of important principles of natural justice i.e. the right to be heard. A decision resulting from violation of the right to be heard is erroneous decision thus cannot stand.

Similarly, the District Land and Housing Tribunal declined to exercise its powers on this impugned decision. It ended up affirming erroneous decision of the Ward Tribunal that arose out of nullity proceedings. The ruling and drawn order of the District Land and Housing Tribunal for Dodoma in Misc Land Application No 102 of 2015 had two main aspects: one, it declined to grant any of the orders prayed for by the Appellants to address illegalities committed by the Ward Tribunal. Second, it affirmed the erroneous decision of the Ward Tribunal for Mtumba by ordering execution of that erroneous judgment.

The reason by the Chairman for the decision was that the Appellants were present before the Tribunal on 21/4/2015 as they testified. It was his further observation that Appellants did not appear on 26/5/2015 and 9/6/2015 without reasonable cause. This reason is untenable in law as record does not reveal at all that parties were dully informed to appear on

26/5/2015 and subsequent dates. The proceedings before the Ward Tribunal are silent as to whether Appellants were dully informed. If the Appellants were informed the record would have expressly indicated on 26/5/2015, 9/6/2015 and on 16/6/2015 when the judgment of the Ward Tribunal for Mtumba was pronounced.

The ruling and drawn order of the District Land and Housing Tribunal for Dodoma dated 2nd June 2016 therefore should not stand as it was based on nullity proceedings of the Ward Tribunal that had no jurisdiction to proceed ex parte thus violating the fundamental right of the Appellants to be heard before their rights and duties are determined.

Regarding pecuniary jurisdiction of Ward Tribunal, I decline to address it. There are no sufficient material facts placed at my disposal to determine the same. I am aware that this matter was raised in the application and written submissions of the Appellants herein for determination of an application before the District Land and Housing Tribunal, record does not show if there was a proper valuation of land in question. It is my considered view that for this Court to determine whether the Ward Tribunal lacked pecuniary jurisdiction or otherwise, it must be seized with ample facts/evidence including a land valuation report conducted and approved in accordance with the law governing land valuation. This is so for simple reasons that valuations of land have different purposes and uses different approaches to arrive at depending on nature of the transaction in that land.

I cannot agree to Respondent's arguments that decision of the Ward Tribunal for Mtumba dated 16/6/2015 and its proceedings should not be examined on their validity or otherwise. I find this argument strange as the decision of the District Land and Housing Tribunal affirmed that decision by ordering execution of the same. It is important for this Court to ascertain whether such decision was correct for the District Land and Housing Tribunal to affirm it.

In fact, two grounds of appeal namely first and third ground of appeal cater for issues of illegality of the Ward Tribunal's decision. It was not expected for Appellants who preferred those grounds challenging validity of proceedings and decision in both Ward and District Land and Housing Tribunals not to argue on the illegalities committed by the Ward Tribunal for Mtumba. Those illegalities touched the root of the matter thus can not be left to remain in court record. It will injustice to let them remain intact.

I have noted that the Tribunal on 2/6/2016 affirmed and ordered execution of decision of the Ward Tribunal for Mtumba dated 16/6/2015, it was imperative for this Court to peruse both proceedings and orders made by two tribunals below to satisfy itself that such decisions and orders were made in accordance with the law.

I am satisfied that this Court by virtue of Article 107A (1) and 108 of the Constitution of United Republic of Tanzania, Cap 2 R.E. 2002 is

enjoined to exercise powers to dispense justice as the final authority in administration of justice. Agreeing with Respondent not to use powers vested in the Court to examine a decision of a quasi-judicial organ that is tainted with illegality would amount to absconding the court's noble role to administer justice.

Indeed, this Court has mandate when exercising its appellate jurisdiction to examine all the records of tribunals below it to satisfy on correctness of the decision. Section 43(1) (b) of the Land Disputes Courts Act, Cap 216 R.E. 2019 clothe this Court with additional powers to deal with any proceedings of the District Land and Housing Tribunal exercising its original, appellate or revisional jurisdiction if it appears that there has been an error material to the merits of case involving injustice, revise the proceedings and make such decision or order therein as it may think fit. These additional powers can be exercised suo moto.

From the foregoing analysis it is my finding that proceedings of both Ward Tribunal for Mtumba and District Land and Housing Tribunal for Dodoma were tainted with illegalities that touch the root of the matter thus they deserve nothing but quashing them and setting aside the decision arising therefrom.

In the upshot therefore, I hold without hesitation that on account of the reasons given above, the appeal should be allowed. It is meritorious. Consequently, in exercise of powers vested in this Court under Section 42

and 43(1)(b) of the Land Disputes Courts Act, I hereby quash both proceedings before the Ward Tribunal and District Land and Housing Tribunal for being marred with irregularities. I set aside judgement, ruling and drawn order arising from these proceedings. I uphold the appeal. Costs shall be in the cause.

It is so ordered.

DATED and **DELIVERED** at **DODOMA** this 20th day of November 2023.

E.E. LONGOPA
JUDGE
20/11/2023.