

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE SUB-REGISTRY OF MANYARA)**

**AT BABATI**

**LAND APPEAL NO. 50 OF 2023**

(Originating from the decision of the District Land and Housing Tribunal for Babati at Babati in Land Application No. 37 of 2019)

**JOSEPHINE SHIJA..... APPELLANT**

**VERSUS**

**JOSEPH MARGWE .....RESPONDENT**

**Date of last order: 15/2/2024**

**Date of Judgment: 23/2/2024**

**JUDGMENT**

**MAGOIGA, J.**

The respondent sued the appellant before the District Land and Housing Tribunal for Babati at Babati (hereinafter referred to as the trial tribunal) for an assortment of reliefs namely, an order to compel the appellant to vacate his house, the appellant to pay arrears of house rent at the tune of Tshs 600,000/=, permanent injunction be issued against the appellant from disturbing the respondent's house as well as costs.



Briefly as it could be gathered from the record, both the appellant and the respondent herein claimed to have purchased a house situated at Yarosirong Homari village within Hanang district (the suit property) from one Konsntantino Mathiano Sumaye. It was claimed by the respondent in his application that he purchased the suit property on 1/6/2018 at the price of Tshs 2,200,000/=. In her written statement of defence, the appellant claimed to have purchased the suit property on 10/12/2019 at the price of Tsh 2,980,000/=.

After hearing the parties, the trial tribunal declared the respondent the lawful owner of the suit property, ordered the appellant to vacate therefrom and to pay costs of the matter.

Aggrieved with the decision of trial Tribunal, the appellant preferred the instant appeal with three grounds of appeal but which were amended to five as follows;

- 1. That the learned chairman of the trial tribunal grossly misdirected himself as he delivered his judgment without involving the opinions of the assessors as required by the*




*law.*

- 2. That the learned chairman of the trial tribunal misdirected himself as he delivered his judgment without analyzing properly the evidence of the parties hence arrived in a wrong conclusion.*
- 3. That the learned chairman of the trial tribunal misdirected himself as he did not frame issues prior to the commencement of hearing.*
- 4. That the learned chairman of the trial tribunal erred in law and facts for ordering the appellant to pay outstanding rents, costs and other claims unreasonably.*
- 5. That the learned chairman of the trial tribunal judgment is bad in law for being marred by incurable irregularities.*

When the appeal called on for hearing, Mr. Jospeh Masanja, learned advocate represented the appellant while Mr. Thadey Lister, learned advocate represented the respondent. The appeal was disposed of orally.



Submitting on the first ground of appeal Mr. Masanja argued that the trial tribunal decided the matter without considering the assessors' opinion as required by the law. To buttress his argument, he referred to the case of **Edna Kibona v Absolom Swebe (sheli)** Civil Appeal No. 286 of 2017 Court of Appeal of Tanzania at Mbeya (unreported) in which it was observed that failure to consider the opinion of assessors renders the judgment invalid. To this, the learned advocate urged the court allow the first ground of appeal.

In reply to the first ground of appeal, Mr. Lister argued that the law was complied with because the learned trial Chairperson sat with two assessors who gave their opinion in writing but also on 12/4/2023 the opinion was read before the parties. He argued that the said opinion was taken into account in the judgment. He argued that the decision referred by Mr. Masanja in **Edna Kibona v Absolom Swebe (sheli)** (supra) is distinguishable to the circumstance of the appeal at hand because in that no opinion was rendered and considered while in this appeal there were assessors and their opinion was considered. On that account, Mr. Lister therefore urged the court to dismiss the first ground of appeal. 

On rejoinder Mr. Masanja essentially reiterated his submission in chief.

Having gone through the parties' rival submission, the record shows that the learned trial chairperson sat with two assessors namely Albina Sulle and Maulid Barie. The two assessors gave their opinion in writing and the same was read in the presence of parties on 12/4/2023 as correctly argued by Mr. Lister, learned advocate for the respondent. Equally the said opinion was taken into account in the judgment as vividly seen at page 3 of the typed judgment.

In terms of section 23(1) of the Land Disputes Courts Act [CAP 216 RE 2019], (the LDCA) the trial Tribunal was required to sit with not less than two assessors. In terms of section 23(2) of the LDCA, the assessors are required to give their opinion before the judgment is delivered. The form of giving the assessors' opinion has been stated under regulation 19 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation GN No. 174 of 2003 (hereinafter referred to as the regulations) which reads;

*"Notwithstanding 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. "*

To this end, I am satisfied that the trial Tribunal fully complied with the requirements of the law as stated above. The first ground, thus, is without merits and is hereby dismissed as I hereby do.

Submitting on the second ground of appeal, Mr. Masanja faulted the trial Tribunal for not properly analyzing the evidence on record. He referred the case of **Ndizu Ngasa v Masisha Magasa** [1999] TLR 202 on the need to analyze the evidence. He submitted that there is ample evidence to establish that the appellant purchased the house in dispute.

In reply to the second ground of appeal, Mr. Lister argued that the trial tribunal analyzed the evidence and found that the respondent had stronger evidence than that of the appellant. He submitted further that the appellant failed to prove her claims.

Determination of the second ground of appeal calls upon this court sitting on the first appeal to re-evaluate the evidence on record and where possible this court may make its own findings.

In determining the matter, the trial tribunal found the evidence adduced by the respondent to be heavier than that of the appellant. It was observed that the appellant had neither document nor any witness to prove that she purchased the suit property.

As stated before, both parties claimed to have purchased the suit property from one Konstantino Mathias Sumaye. The respondent tendered in court sale agreement to the effect as well as customary title evidencing his ownership. The appellant had no any proof to establish that she purchased the suit property. In her evidence she claimed that she purchased the house in dispute but there was no any document evidencing such transaction because of the relationship with the seller. The said Konstantino was called as a witness for the respondent and established that he disposed the suit property to the respondent.

I am of settled view that the trial Tribunal analyzed the evidence on record and I find no reason to fault its findings. Therefore, the second ground of appeal lacks merits and it is accordingly dismissed.


Submitting on the third ground of appeal, Mr. Masanja argued that no issues



were framed before hearing of the matter had commenced. He referred the case of **NM PLC & another v Lero Laurent Sawe** Consolidated Civil Appeal No. 385/339 of 2021 Court of Appeal at Dodoma (unreported) in which it was observed that the decision of the court should base on the framed issues failure of which renders the decision invalid.

In reply Mr. Lister readily conceded that no issues were framed. He argued that each case must be determined on its own circumstance. He argued that issues were not framed because when hearing commence the appellant was not present hence there was no need to frame issues. He argued that failure to frame issues did not occasion any failure of justice because parties were heard.

Having gone through trial Tribunal's record, and parties' rival submissions on its effect, indeed no issues were framed before hearing of the matter had commenced. Rightly as argued by the learned advocated for the respondent, the appellant was not present at the commencement of hearing. The matter was ordered to proceed ex-parte. The requirement to frame issues is provided for under regulation 12(3)(b) of the regulations. That is the claim must be





read in the presence of the respondent, if he/she disputes the claim then issues are framed. In the instant matter there was no room for framing issues because the claim was not read to the appellant and dispute the same because she was not present.

I however find that the omission to frame issues in the instant matter was not fatal since the basis of the claim was on ownership of the suit property. The trial Tribunal addressed the basis of the claim and came to the conclusion that the respondent proved his claims. The appellant could not state how she was prejudiced with the omission to frame issues. After all the provisions of section 45 of the LDCA states in no ambiguous terms that;

*No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence **unless such error, omission or irregularity or improper admission or***



**rejection of evidence has in fact occasioned a failure of justice.** [Emphasis added].

Guided by the spirit of the above provision and the oxygen principle, I find that the omission though noted but occasioned no injustice to the parties. For the above reasons, I find the third ground of appeal lacking in merits and the same is dismissed.

Submitting on the fourth ground of appeal Mr. Masanja faulted the trial tribunal for granting reliefs such as rent, costs and other claims which were not proved. The claims such as rent were pleaded but not proved.

In reply Mr. Lister argued that the claims of rent may be removed but costs were properly pleaded and granted by the trial Tribunal.

Going through the application form which instituted the matter before the trial Tribunal, the respondent claimed among other reliefs payment of rent arrears at the tune of Tshs 600,000/= as well as costs of the matter. The trial tribunal ordered the appellant to pay any rent arrears and other claims within 14 days. This order by the trial Tribunal does not state the amount which the appellant



should pay. Although the respondent specifically pleaded rent arrears at the tune of Tshs.600,000/= but he never proved the same. It is settled law that specific claims must not only be specifically pleaded but also strictly proved.

In the instant appeal as rightly argued by Mr. Masanja and rightly so in my own opinion, the rent arrears were not proved. Hence I find merits in the fourth ground of appeal. I proceed to quash and set aside the order against appellant to pay rent arrears and other claims. However, the order for costs remains undisturbed for was consequential to the winning party to a civil case unless reasons are given. So ground four is partly allowed and partly disallowed to the extent explained above.

Finally, on the fifth ground of appeal Mr. Masanja maintained that the judgment of the trial tribunal is marred by irregularities such as lack of opinion of assessors, no issues framed and the same was not based on the evidence on record.

In reply, Mr. Lister argued that no serious irregularities were pointed out because none of the parties was prejudiced.



The fifth ground of appeal should not detain me longer than it is necessary. I have dealt with the issue of assessors' opinion, the issues as well as failure to analyze the evidence on record while addressing the first, second and third grounds of appeal. Hence I find no merits in the fifth ground of appeal.

In final analysis save for the fourth ground of appeal, I find the appeal lacking merits and the same is dismissed with costs.

It is so ordered.

Dated at Babati this 23<sup>rd</sup> day of February, 2024.



A handwritten signature in black ink, consisting of a series of vertical strokes and a horizontal line, followed by a small flourish.

**S. M. MAGOIGA**

**JUDGE**

**23/2/2024**