

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

**MISC. LAND APPEAL No. 24 OF 2022**

*(Originating from the decision of Nyamilama Ward Tribunal in Land Application No. 04 of 2021 and the District Land and Housing Tribunal for Mwanza at Mwanza in Misc. Land Appeal No. 52 of 2021)*

**BEATUS SAMWEL----- APPELLANT**

**VERSUS**

**SALUM SIMEO MASALU----- RESPONDENT**

**JUDGMENT**

*Last Order date: 14.02.2023*

*Ruling Date: 17.02.2023*

**M. MNYUKWA, J.**

The Appellant BEATUS SAMWEL appealed against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza in Misc. Land Application No. 52 of 2021 which was held in favour of the respondent. In the record, it goes that, the parties had their dispute before the Nyamilama Ward Tribunal in Land Application No. 04 of 2021 which was decided in favour of the appellant on 30.06.2021. Dissatisfied, the respondent in this appeal, approached the DLHT for Mwanza at Mwanza and filed Appeal No. 52 of 2021 against the decision of Mabuki

Ward Tribunal in Land Application No. 04 of 2021. The DLHT determined the matter and decide in favour of the respondent in this appeal. Aggrieved by the decision of DLHT, the appellant filed this instant appeal with 5 grounds of appeal thus:-

- 1. That the DLHT erred in allowing the appeal and nullify both the proceedings and judgment of Nyamilama Ward Tribunal and declared the respondent a lawful owner of the disputed land.*
- 2. That the ward tribunal was right to decide in favour of the appellant based on the evidence presented before it.*
- 3. That the evidence of the appellant was supported by the district leaders who proved that the disputed land belongs to him after conducting a locus in quo.*
- 4. That, every witness before the Ward Tribunal gave their evidence under oath and the DLHT erred in holding that witnesses testified without taking an oath.*
- 5. That the DLHT erred for failure to take into consideration the provision of section 45 of Cap. 216 RE: 2019.*

At the hearing, the appellant appeared in person while the respondent afforded the services of Mr. Mushobozi, learned counsel and the hearing proceeded by way of oral submissions. The appellant was the first to submit and he prays this court to adopt his grounds of appeal to form part of his submissions.



He added that, the ward tribunal was right to declare him a lawful owner of the disputed land and he, therefore, oppose the decision of the DLHT.

He prayed to drop ground No. 3 of his appeal the prayer which was dully granted by the court. He proceeded that, all the witnesses before the Ward Tribunal testified and as a layman, he know nothing if the procedure was not followed.

He went on that, the DLHT erred for not considering the provision of section 45 of cap 216 RE 2019 since the Ward Tribunal is not strictly bound to follow the law. He winds up praying this court to allow his appeal.

Mr. Mushobozi for the respondent opposed the appellant's submissions. On the 1<sup>st</sup> ground of appeal, it was his submission that, the DLHT rightly nullify the decision of the ward tribunal. Referring to the evidence and the analysis of the ward tribunal he claims that, the Ward tribunal did not declare the appellant as the owner of the disputed land but the disputed land was declared a road reserve. He prays for the appeal to be dismissed as the appellant prays to be declared as the owner of the disputed land.

On the second ground, he submitted by claiming that it is not merited without assigning any reason.



On the 4<sup>th</sup> ground, he submitted that it is true as shown in the proceedings of the Ward Tribunal that, witnesses did not take oath before testifying and therefore it is as good as no evidence tendered before the Ward Tribunal. Supporting his arguments, he cited the case of **Getruda Mkonyoka vs Harish Patenech**, Civil Appeal No. 138 of 2016.

On the 5<sup>th</sup> ground of appeal, he submitted that, it is true that the ward tribunal is not bound by legal technicalities in delivering its decisions, but what transpires before the Ward tribunal was fatal.

The appellant had nothing to add in his rejoinder that he reiterates what he had submitted in chief.

After going to the appellant's grounds of appeal and considering the submissions from both parties, I observed that the 4<sup>th</sup> and 5<sup>th</sup> grounds of appeal raised a legal concern and in the determination of whether this appeal has merit, I will determine the 4<sup>th</sup> and 5<sup>th</sup> grounds together for they are intertwined. The appellant claimed that DLHT erred in holding that witnesses testified without taking an oath before the Ward Tribunal while their evidence was taken under oath. In his submissions, the appellant who claims to be a layman, insisted that he know nothing on the procedures in handling cases.



To begin with, I wish to point out that, it is a matter of law that, in the court of law or a quasi-judicial body, when the witness testified he has to take an oath. Section 4 (a) of the Oaths and Statutory Declarations Act, Cap. 34 R.E 2019 makes it mandatory for the witnesses to take oath before giving evidence in court as follows:

Section 4. *"Subject to any provision to the contrary contained in any written law, an oath shall be made by-*

*(a) any person who may lawfully be examined upon oath or give or be required to give evidence upon oath by or before a court."*

The appellant claimed that, the witnesses who testified before the Ward Tribunal took an oath and the DLHT erred in holding that they take no oath. Going to the records as it appears, it bears testimony that no witness testified under oath as it was rightly observed by the DLHT as the first appellate tribunal.

Having found that indeed no oath was administered to the witnesses, I now determine the 5<sup>th</sup> ground of appeal that the appellant claims that the DLHT erred to take into consideration the provision of section 45 of Cap. 216 RE: 2019. The law stated 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*

*omission vitiates the proceedings because it renders the evidence which is not taken under oath, invalid."*

See also- **Iringa International School v. Elizabeth Post**, Civil Appeal No. 155 of 2019, and **The Catholic University of Health and Allied Sciences (CUHAS) v. Epiphania Mkunde Athamase**, Civil Appeal No. 257 of 2020.

In the instant appeal, I agree with the DLHT that the Ward Tribunal erred in determining the rights of the parties on the basis of the evidence which was improperly admitted which occasioned a failure of justice. In fine, both the proceedings and judgment of the Ward Tribunal become a nullity.

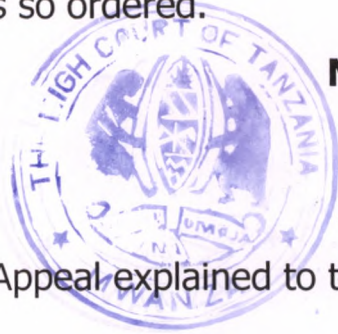
In the premises, I refrain from determining the rest of the grounds of appeal, as the same will not save useful purpose now. Under the circumstances, I agree with the holding of the DLHT to the extent that both the proceedings, judgment and order of the Ward Tribunal are nullity and therefore I set aside and no party is declared as the legal owner of the disputed Land. I further nullify the judgement and proceedings of the DLHT which declare the respondent as a lawful owner of the disputed land. As to the way forward, if parties so wish they can institute a fresh matter following a due process of law.





All said, I find the appeal devoid of merit and consequently, I proceed to dismiss it with no order as to costs.

It is so ordered.



  
**M.MNYUKWA**

**JUDGE**

**17/02/2023**

Right of Appeal explained to the parties.

  
**M.MNYUKWA**

**JUDGE**

**17/02/2023**

**Court:** Judgment delivered on 17<sup>th</sup> February 2023 in the presence of both parties.

  
**M.MNYUKWA**  
**JUDGE**  
**17/02/2023**

*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”.*

Notwithstanding the rules governing the admissibility of evidence in the Ward tribunal, in respect of what is stated In the case of **Unilever Tea Tanzania Limited vs David John**, Civil Appeal No. 413 Of 2020 the Court of Appeal stated that: -

*"Judgment of any court or quas-judicial tribunal must be grounded on the evidence properly adduced during the trial otherwise it is not a decision at all”.*

As rightly held by the DLHT, since the trial tribunal was discharging its duties as a quasi-judicial body in law, it was therefore supposed to ensure that the witnesses took oath either sworn or affirmed before giving the evidence. In the circumstances where the quas-judicial body failed to abide by the procedure, the Court of Appeal has this to say in the case of **Unilever Tea Tanzania Limited v. Davis Paulo Chaula**, Civil Appeal No. 290 of 2019 that:-

*"Since therefore, swearing in of a witness before he testifies is a mandatory requirement, there is no gainsaying that the*