

IN THE HIGH COURT OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

LAND REVISION NO.1 OF 2023

(Originating from Songea District Land and Housing Tribunal, Application

No. 7/2018)

VIRGILIA BENRETI MBAWALA APPLICANT

VERSUS

AMINA MGAYA1ST RESPONDENT

FORTUNATUS NGONYANI2ND RESPONDENT

RULING

Date of last Order: 10/02/2023

Date of Ruling: 14/02/2023

E.B. LUVANDA, J

This is revision *proprio motu*, following a complaint lodged by Mr. Vicent Kassale learned Counsel for the Applicant above mentioned. In a letter of complaint, the learned Counsel explained that they are unhappy with the ruling of the Chairman of the District Land and Housing Tribunal (hereinafter to be referred as the Tribunal) who abrogated the entire proceedings in Application No. 71/2018 on account of non compliance to rule 12(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, G.N. No. 174 of 2003, in that his predecessor Chairman overlooked to read and explain the contents of

the application to the Respondents before commencement of hearing. It is to be noted that the Honorable Chairman of the Tribunal revealed the said anomaly when the matter was at the stage of defence, at the verge of the fourth witness for the First Respondent to adduce his evidence.

Correctly the Honorable Chairman of the Tribunal invited parties to address him on that legal issue. It is in records that the learned Counsel for both parties conceded that there was non compliance to the said rule. However, both Counsel were of unfeigned opinion, that the omission could not prejudice any party and argued the matter to proceed. The Honorable Chairman of the Tribunal stick on his guns and disregarded the unanimous opinion of the learned Counsel for both parties and ruled the view that the point raised by the Tribunal on it is motion *suo moto* has merit, in that the said rule was contravened and was not complied with, hence annulled the entire proceedings as aforesaid.

After receiving a complaint, I invited the learned Counsel to address me, where they maintained the same position that no any injustice was occasioned to either party by the alleged non compliance. The learned Counsel for both parties who appeared before me including Mr. Lazaro Simba learned Advocate for Applicant and Mr. Octatus Japhet learned

Counsel for Respondents, asked this Court to order the matter to proceed.

It is true that the provision of rule 12(1) of G.N. No. 174 2003 provide for a requirement of the Chairman to read and explain the contents of the application to the Respondent before commencement of hearing.

Admittedly to the records of trial tribunal does not reflect compliance to that rule.

However, the test here is whether the omission did or is likely to occasion miscarriage of justice to parties. In other words, the question is whether the Respondents were prejudiced anyhow by the alleged omission.

As I have said repeatedly, both parties were of the view that no prejudice was occasioned or likely to be occasioned to either party.

In his ruling, the Honorable Chairman of the Tribunal ruled, I quote in verbatim,

"Sio sahihi baraza hili kwenda kuangalia kama kuna haki za Wajibu Maombi zitaathirika ingali kanuni imekiukwa na haijatekelezwa"

With respect, the above obiter dictum suggest that something was awry. In fact, the learned Chairman over looked to grasp the gist and contextual of a letter of the provision of rule 12 (1). Essentially that proviso is meant to ensure that the Respondent understand the details of the application or claim prior commencement of hearing. See sub rule 2 of rule 12 G.N. No. 174/2003.

Herein, the First Respondent filed a written statement of defence and the Second Respondent presented a reply to the Applicant's application. Both pleadings were signed by the First and Second Respondent by their hand. This by necessary implication suggest the Respondents are acquainted with the facts of the case and understand the nature and details of the claim lodged by the Applicant.

Above all, when the Applicant's witnesses were testifying, the Respondents were given a chance to cross examine, indeed they exercised that right. Likewise during defence for the First Respondent.

In the context, to vitiate a trial for reasons of non compliance to rule 12(1) G.N. No. 174/2003, was improper, in the circumstances where parties understood all the details of the matter and claim generally.

In the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph**, Civil Appeal No. 55 of 2017, CAT at Mwanza, where the appeal was grounded to unfold on whether the Ward Tribunal for Turwa in Tarime District was properly constituted in terms of section 4(1) (a) of the Land Disputes Courts Act, Cap 206, on account that the records shows that on several occasion, neither the Chairman nor any member appointed to preside, presided over the proceedings of the Ward Tribunal. The apex Court had this to say in regard to the said anomaly, I quote,

With the advent of the principle of overriding objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with case justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over reliance on procedural technicalities. Section 45 provides:

"S.45.- 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 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 failure of justice"

Therefore the holding by the Honorable Chairman that he cannot deliberate on whether the omission had prejudices any party, constitute an error material to the merits of the case with overwhelming likelihood of occasioning injustice to parties unnecessarily.

I therefore exercise supervisory powers and invoke the provision of section 43(1) (a) and (b) of Cap 206, revise and quash the order of the Honorable Chairman of the trial Tribunal dated 13/10/2022 and order the matter to proceed where it ended on the coram and proceedings dated 15/09/2022, for the First Respondent to summon the fourth witness for further progress of a suit.

The records of the trial Tribunal to be dispatched thereat within fourteen from the date of this order.

Order accordingly.



E.B. LUVANDA

JUDGE

14/02/2023