

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

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**LAND APPEAL NO. 53 OF 2021**

*(Arising from the decision of District Land and Housing Tribunal for Ngara in Application No. 1 of 2018)*

**CECILIA NAMPESYA. .... APPELLANT**

**VERSUS**

**JOB GAHANGA..... RESPONDENT**

**JUDGMENT**

15<sup>th</sup> and 17<sup>th</sup> February, 2023

**BANZI, J.:**

The Respondent instituted a suit before the District Land and Housing Tribunal for Ngara ("the trial Tribunal) against the Appellant for trespassing into his land located at Kibimba Hamlet within Ngara District. After receiving the evidence of both parties, the trial Tribunal decided in favour of the Respondent by declaring him as the lawful owner of the suit land with an order permanent injunction against the Appellant. Discontented with the decision of the trial Tribunal, the Appellant preferred this appeal armed with six grounds but for the apparent reason, I shall not reproduce them.

At the hearing, the Appellant was represented by Mr. James Marenga, learned counsel and on the other hand, Mr. Dastan Mujaki, learned counsel appeared for the Respondent.

With permission of the Court, Mr. Marenga began his submission by pointing out irregularities found in the conduct of proceedings of the trial Tribunal. First and foremost, there was change of Chairmen to the effect that, the one who composed the judgement was different with the one who received the evidence of both parties. This is a fatal irregularity which vitiates the judgment as it was stated in the case of **Ashura Mohamed Mbagalo v. Mwanangoy Mtoro Mwanangoy**, Misc. Land Case Appeal No. 112 of 2019 HC Land Division (unreported). The second anomaly is involvement of assessors. He contended that, the opinion of assessors is not reflected in the proceedings as required by law and this makes the entire proceedings nullity as it was held in the cases of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 CAT at Mbeya (unreported) and **Yunisi Deogratius v. John William**, Land Appeal No. 70 of 2021 HC at Bukoba (unreported). He concluded his submission by requesting the Court to invoke its revisionary powers by nullifying the proceedings and quashing the judgment as the irregularities are incurable.

Mr. Mujaki was quick to admit the anomalies pointed out by his learned friend. However, on the way forward, he urged this Court to adopt the stance taken by the Court of Appeal of Tanzania in the case of **Josephine Mangala Msema (As Legal and Personal Representative of Rev. Sadock Yakobo Mlongecha, the deceased) v. The Registered Trustees of**

**PEFA, Kigoma**, Civil Appeal No. 490 of 2021 CAT at Tabora (unreported) by remitting the record to the trial Tribunal for re-trial. He also prayed for each party to bear its own costs since the irregularities were caused by the trial Tribunal.

Having carefully examined the record, I am constrained to agree with learned counsel of both sides that, the proceedings of the trial Tribunal are tainted with irregularities resulting into vitiating the entire proceedings. A quick perusal of the proceedings reveals that, from the inception on 4<sup>th</sup> January, 2018, until 27<sup>th</sup> August, 2019, the case was presided by Hon. R.E. Assey, Chairman. On 26<sup>th</sup> September, 2019, Hon. E. Mogasa, Chairman took over the conduct of the proceedings whereby, he heard and received the evidence of both parties. After closure of defence case on 25<sup>th</sup> March, 2020, the case was scheduled for Chairman to receive Assessors' opinion on 24<sup>th</sup> May, 2020. However, nothing transpired on that day but on the following day *i.e.*, 25<sup>th</sup> May, 2020, the coram reveals that. Hon. E. Mogasa, Chairman fixed the date of judgment on 29<sup>th</sup> May, 2020 in the absence of both parties and Assessors.

The circus did not end there, the case stayed adjourned for six months until, on 5<sup>th</sup> November, 2020 when Hon. R. Mtei, Chairman took over on the reason of transfer of Hon. Mogasa, Chairman. On that day, both parties were absent and so as the Assessors. Despite absenteeism of parties and

Assessors, the successor Chairman read over the opinion of Assessors and set the date of judgment on 15<sup>th</sup> December, 2020 when it was duly delivered after being composed with the Chairman who did not hear the evidence of parties. Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, requires the Assessors to give their opinions in writing before the Chairman composes his judgment. The opinions must be given in the presence of parties as it was stated in the case of **Edina Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 CAT (unreported). The need to require every Assessor to give his opinion in the presence of parties was underscored in another case of **Tubone Mwambeta v. Mbeya City Council** (*supra*) where it was observed 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.**"* (Emphasis supplied).

In the instant matter, although there is written opinion in the file, but the same was read over by the Chairman in the absence of parties and the Assessors. Under these circumstances, it cannot be said that, the Assessors in this matter gave their opinion to the parties before the Chairman composed the judgment. This is a serious irregularity which renders the proceedings before the trial Tribunal a nullity. See also the case of **Ameir Mbarak and Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 CAT (unreported).

On the way forward, I would agree with learned counsel for the Respondent to remit the record to the trial Tribunal for Assessors to give their opinion in the presence of the parties. However, we are not guaranteed on procurement of the same Assessors who participated from the beginning to the end. Likewise, it can be recalled that, the successor Chairman was not the one who received the evidence of parties for him to be in a proper position to compose a just judgment. In order to avoid unforeseeable stumbling blocks and for the interest of justice, a fresh trial will be proper order under the prevailing circumstances.

That being said, I invoke revisional powers under section 43 (1) (b) of the Land Disputes Courts Act and nullify the entire proceedings of the District Land and Housing Tribunal for Ngara at Ngara in Land Application No. 1 of 2018, quash the judgment and set aside the decree dated 15<sup>th</sup> December,

2020. I hereby remit the case file to the trial Tribunal for matter to be heard afresh before another Chairman and a new set of Assessors. Considering that neither of the parties is to blame for the outcome of this appeal I make no orders as to costs.

It is accordingly ordered.



A handwritten signature in blue ink, appearing to be 'I. K. Banzi'.

**I. K. Banzi**  
**JUDGE**  
**17/02/2023**

Delivered this 17<sup>th</sup> day of February, 2023 in the presence of Mr. Dastan Mujaki, learned counsel for the Appellant who is also holding brief of Mr. James Marenga, learned counsel for the Respondent.

A handwritten signature in blue ink, appearing to be 'I. K. Banzi'.

**I. K. BANZI**  
**JUDGE**  
**17/02/2023**

