

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 42 OF 2023

(Originating from Land Application No. 7 of 2021

of District Land and Housing Tribunal of Singida)

MATHEO THOMASAPPELLANT

VERSUS

THE REGISTERED TRUSTEE OF FREE PENTECOSTAL

CHURCH OF TANZANIA.....RESPONDENT

RULING

02.04.2024

HASSAN, J.:

The present appeal stems from the decision of the District Land and Housing Tribunal (DLHT) of Singida in the Land Application No. 07 of 2021 of which the respondent emerged victorious. Dissatisfied by the decision of the Tribunal, the appellant knocked the door of this court looking for redress of what he believes to be his mugged right.

The material background facts leading to the dispute is that, the respondent had trespassed to the appellant's land measuring two (2) acres

which he has inherited from his late parents. Being resistive to return the same, thus, the appellant approached the DLHT of Singida to help him regain his trespassed land from the respondent's hands who had already erected a building on it.

In his appeal, the appellant preferred four (4) grounds of appeal to be determined by the court as such:

- 1. That the trial tribunal erred in law and fact for holding that the land in dispute is the property of the respondent while its findings solely relied on a sale agreement of which the same was obtained by undue influence and misrepresentation.*
- 2. That the trial tribunal erred in law and fact for deciding the matter in favour of the respondent while disregarding the evidence of the appellant that he did not sell the land in dispute to the respondent in stead he customarily mortgaged it.*
- 3. That the trial tribunal erred in law and facts for holding the matter in favour of the respondent while its*

decision was based on an unauthentic sale agreement [sic].

4. That the trial tribunal erred in law and facts for failure to analyse, examine and evaluate properly the evidence adduced by the parties, hence reached to the erroneous decision.

When the appeal was called on for hearing, the appellant Matheo Thomas was absent in person, however his counsel Mr. Jackson Mayeka entered presence on his behalf. Whereas, on the other side, Rev. Matayo Mpinda was present on behalf of the respondent under the legal warden of learned counsel Mr. Onesmo David.

During hearing, before appellant canvassed to his submission, the court *suo mottu* observed some irregularities which need satisfaction of the court as to the appropriateness of the proceedings from the land tribunal bellow. The issues observed touches on the involvement of assessors in the decision making, and appending of signature by the chairman in the evidence of each witness he recorded.

Upon such observation, the court invited both learned counsels to address the court on the questions raised as to whether or not the trial Tribunal which sat with two assessors has complied with section 23 (1) and (2) of the Land Disputes Courts Act, [Cap. 216 R. E. 2002]; and so, whether a chairman who presided over the tribunal had appended his signature underneath of each witness's evidence after he recorded it.

By so doing, the appellant's counsel Mr. Jackson Mayeka candidly admitted that, assessors were not properly involved in the conduct of the tribunal, the undertaking which is contrary to section 23 (1) (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 which imposes a mandatory requirement to the composition of the District Land and Housing Tribunal. Also, regulation 19 (1) (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 which provides on how the opinions of assessors should be considered before judgment is composed was also flawed.

He further submitted that, on 11th November, 2022, the matter was scheduled for opinion of assessors as it appeared at page 40 of the typed proceedings where it reads: "***opinions of assessors were read over to the parties.***" Thereafter, the matter was fixed for judgment on 30th

January, 2023. However, coming on that date, the said opinions are not visible in the record of proceedings as to what assessors had opined.

Additionally, he averred that, surprisingly in the typed judgment at page 5 and 6 there is an opinion of assessors of which were not recorded in the proceedings. He further stressed that, to exclude opinion of assessors in the records of proceedings is a fatal irregularity which vitiates the whole proceedings. On that anomaly, he pinpointed the case of **Dora Twisa Mwakikosa v. Anamali Twisa Mwakikosa, Civil Appeal No. 129 of 2019 (unreported)**, where at page 10 to 12 of the judgement the Court of Appeal decided that omission of the opinion of assessors is fatal. Thus, he enquired the court to use its revisionary power to nullify the proceedings and order for retrial without costs.

At the end, learned counsel Mayeka prayed to disregard the second issue about appending of signature raised by the court, since the first issue which he addressed can dispose off the matter entirely.

On his side, learned counsel for the respondent readily concurred with the appellant's counsel that the matter was wrecked at the trial tribunal. On that, he succumbed that it was true that assessors were not properly

involved as to the requirement of the law. Similarly, he submitted, it is clear that evidence of each witness was not appended by the chairman after he had recorded it. Hence, he prayed the court to nullify the whole proceedings without costs.

That being the case, it is noticeable that the matter has now been rested to the court for its determination. Thus, on my endeavor, I will move back to the record of proceedings keenly to determine the allegation as to whether section 23 of the Land Disputes Courts Act, [Cap. 216 R. E. 2002] was fully complied.

At this juncture, it is important for the sake of clarity to introduce the said section 23 (1) and (2) of the Act in full:

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

(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."

From the provision of section 23 (1), the composition of the Tribunal has been enumerated to be mandatorily, a chairman sitting with not less

than two (2) assessors. On the other hand, under section 23 (2), which has to be read together with Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003 (the Regulations), the requirement is that, after taking part in the conduct of the matter, the assessors are required to give their opinions in writing and the same be read out to the parties before the Chairman pronounces a decision which has incorporated those opinions. See also: **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported).

As stated above, before going further, decision in the case of **Peter Makuri V. Michael Magwega**, Civil Appeal No. 107 of 2019 (CAT) Mwanza (unreported), pressed the same on the issue of assessor's participation in the decision making. In this case the court held that:

*"It is a mandatory legal requirement that in adjudicating land matters before the Tribunal, the Chairman sits with aid of assessors. The assessors sitting in, are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose decision of the Tribunal. **And all these must be reflected on record of proceedings.** Besides, where the Chairman disagrees with the opinion of the assessors, he must record reasons. **In the absence on record of the opinion of assessors,***

it is impossible to ascertain if they did give any opinion for consideration in composing the judgment of the Tribunal”.

See also the case of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho, Civil Appeal No. 21 of 2013** where the similar stand was maintained.

Now, going back to the case at hand, it is apparent the record of proceedings are silent, which means there is nowhere the opinion of assessors was recorded to form part of the proceedings. And thus, if there was any, then, they were left in vacuum. That is to say, one cannot see, read or even verify as whether chairman has followed or depart from those assessor's opinions in his judgment.

Going from the above, it follows that, in so doing the chairman has violated the principle buttressed in the case of **Peter Makuri V. Michael Magwega**, and that of **Emmanuel Christopher Lukumai V. Juma Omari Mrisho** (supra), where it was stressed among other things that, assessors sitting in the tribunal are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose decision of the Tribunal. And all these, must be reflected on record of proceedings.



In my view therefore, failure to record each assessor's opinion in the records of proceedings before judgment was composed is a fatal omission which nullify the whole proceedings. In the circumstance, though it appears in the judgment, still, one can inquire as from where the chairman has referred such opinions in so far as, it is not in the records of the proceedings.

To that end, as there is nothing to sanction that the chairman had composed the judgment with the aid of assessors, then in my view, guided by the above, I am certain that failure to observe all these principles is fatal in the wards of the law. In the consequences thereof, the only remedy available in such situation is to nullify the proceedings and set aside the resulting orders.



That being the case, I subsequently invoke the power given to this court by virtue of section 43 of the Land Disputes Courts Act, Cap 216 R.E 2019 to nullify the proceedings, quash the judgment and set aside the orders meted. Additionally, I order that the application No. 7 of 2021 be remitted to DLHT of Singida to be heard *de novo* by another chairman with new set of assessors. On the issue of appending signature, I will not detain myself to discuss it since it will only serve as an academic. At the end, I make no order as to costs since the matter was raised by the court *suo mottu*.

Ordered accordingly.

DATED at **DODOMA** this 2nd day of April, 2024.



S. H. HASSAN
JUDGE
2/4/2024

This Judgment delivered this 2nd day of April, 2024 in the presence of the appellant who appeared in person unrepresented and respondent was absent.



S. H. HASSAN
JUDGE
2/4/ 2024