

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

LAND APPEAL NO. 65 OF 2023

***(Originating from District Land and Housing Tribunal of
Singida in Land Application No. 39 of 2021)***

VICENT MARTIN MAGHEMBE.....APPELLANT

VERSUS

BONIPHACE MARTIN MAGHEMBERESPONDENT

JUDGMENT

04.04.2024

HASSAN, J.:

The present appeal stems from the decision of the District Land and Housing Tribunal (DLHT) of Singida in the Land Application No. 39 of 2021 of which, the two blood brothers were fighting for land ownership. Truly observing, their eyes tell, and indeed, it really reminds me of the sweet wise words from the famous writer Bhawna Jajona.

"My brother, my love and my life."

Remorsefully, to the old siblings, the lovely brotherhood quote "***My brother, my love and my life***" works opposite to their minds, their scrutiny towards each other appears rival. It is nobody's fault except the asset left by their beloved mother who has now rest in the eternal peace.

The background facts leading to the dispute is that, the parties are siblings. They are the 1st and 2nd brothers out of eight (8) siblings. They are stiffly fighting for ownership of the land parcel left by their blood parents, father and mother who had passed away in 2018 and 2020 respectively. The appellant herein, who was the applicant at the DLHT claims to have been given the disputed land by his parents since 1984. After he attained it, he cleared and gradually started to erect foundation which was completed on 2006. Coming on 2008, he received the offer letter (exhibit P1) and on 2009, he attained a certificate of the right of occupancy numbered 16503 DLR (exhibit P2).

All along, without notice, the respondent intercepted the disputed land parcel and started to developed it into a business hub. He erected and opened up pharmacy shops for rent. Then, when the appellant inquired on the same, the respondent answer was straight, that the said disputed land belongs to the whole family. Hence the respondent claimed that, the

disputed land initially belonged to their mother as she owned it since 1984. He further pressed that he had exchequer receipts for land rent payment No. 02159037, 193085747448 and 411996 yielding the name of Vicent Martin Maghembe (exhibit D1). On that, he admitted that, the names appeared in the receipts is of the appellant. But he justified that, it was merely used by their mother since he was her first son. He added that, before their mother's death, in 2017 they convened a family meeting which involved other siblings to set for joint management of the disputed land. In brief, from there the feud started.

That assertion from the respondent was vehemently denied by the appellant, and the appellant further avowed that, while their parents were alive, nobody had dared to touch the disputed land.

Shockingly, the feud developed further and the appellant herein decided to register his complaint in the DLHT of Singida in order to fetch for redress. During hearing at the DLHT, the appellant testified only himself. Whereas, for the respondent, he testified himself with other four (4) witnesses including his young sister Gudelida Martin, his uncle Ranco Banard and others. And finally, after hearing completed in the DLHT, the respondent emerged victorious.

Aggrieved by the decision of the DLHT, the appellant lodged the instant appeal. Before me, both parties appeared in person, and the appellant enjoyed legal service of learned advocate Mr. Paul Kaunda. Whereas, the respondent hired learned counsel, Majaliwa Wiga.

As usual, when the matter was called for hearing on 4th April, 2024, parties entered presence in person under the warden of their respective advocates. Before hearing commence, learned advocate for the appellant bag the court to add another one ground of appeal to make them four (4) grounds in total after adding with the earlier ones. However, for the reason to be apparent hereinunder, I will avoid to dictate the whole package of grounds.

To that note, the appellant's advocate added that, the manner of which the application was conducted at the DLHT was unprecedented, simply the DLHT lacks jurisdiction. He went into details that, coram was improperly constituted in violation of section 23 (1) of the Land Disputes Courts Act, Cap. 216 R. E 2019.

Therefore, after seeing that, this ground alone can dispose off the appeal, he opted to argue only this ground and he bag to ignore the remaining three (3) other grounds of appeal.

In his submission, learned advocate Kaunda succumbed that, the trial proceedings speak louder, that when the hearing commenced on 26/07/2022, and the tribunal heard the evidence of DW1, (the respondent herein), the chairman of the tribunal sat with only one assessor namely Ms. Kisenge. On that date, looking on the records as it appears at page 10 of the typed proceeding, as well as in the original records, members were not indicated in the coram. Thus, the space designated for the same remains blank. Mr. Kaunda went on to submit that, surprisingly at page 14 of the typed proceedings the names of one assessor become visible.

Similarly, the same anomaly noted at page 16 with respect to the testimony of DW3 where the coram contains the names of the Chairman, tribunal's clerk and parties. Again, the names of assessors are missing. However, like before, at page 19 of the proceedings, names of only one assessor emerged and she discharged her duty. The same defect appeared once again at page 25 with respect to DW5's testimony where a coram bears

no assessors but at page 27 one assessor by the name of Mr. Kinduru occurred, though she ignored to ask questions.

In conclusion thereof, learned advocate Kaunda stressed further that, the omission is fatal, and it is as bad as the respondent's case was not entertained at all. Adding to that, he submitted that, this anomaly has affected jurisdiction of the trial tribunal guaranteed under section 23 (1) of the Land Dispute Courts Act. He pressed further that; language of this provision is coached with mandatory term "shall" and therefore it has to be mandatorily enforced. At the end, he prayed the court to nullify the proceedings, and quash the judgment and decree without costs.

On the other hand, learned advocate Wiga after a short discussion with his client, he readily admitted to the anomaly that, the trial tribunal was improperly constituted, and for that error, it lacks jurisdiction. He added that, even on the part of the appellant, there is no names of assessors mentioned in the coram but the two assessors only appeared when they discharged their duty to question the appellant after he had testified.

Now, having considered the submissions by the parties, the issue for determination of the court is whether the trial tribunal had jurisdiction to entertain the matter.

Therefore, navigating through the issue, I firstly replicate the provision of section 23 (1) of the Land Disputes Courts Act which infuse constituency of the DLHT. The section provides:

"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 loud to the parties before the Chairman composes the judgment.

Needless to say, in the instant case the fault is obvious as it was submitted by the gentle advocates. That said, it is apparent that considering the dates indicated herein-above, coram of the court was flawed. Members appeared absent on the coram, and even in the course of discharging their duty, if it appears to be seen present, then only one assessor seems present.

More so, looking on the record from the first date of the tribunal's deliberation, there is nowhere members were appointed with their names unveiled. Simply, the records are silent. Also, moving forward in the proceedings, assessors were also unjustified interchanged. For instance, looking at page 7 of the typed proceedings, for the first time the names of **"Mr. Kinduru and Mama Kisenge"**, appeared as assessors and they have discharge the duty of assessors, though, as indicated earlier, they were invisible in the coram, and they were not appointed before. For instance, at page 14 only Ms. Kisenge appeared in the proceedings as she discharges the duty of the day, though she is not visible in the coram. Whereas, at page 18

both assessors appeared in the proceedings as they discharge the duty of the day, but again they are not visible in the coram.

That being the case, I am on the same position with the learned counsels, thus, owing to the earmarked glitches, the tribunal lacks jurisdiction to entertain the matter. Hence, in the consequence thereto, I invoke my revisionary powers under section 43 (2) of the Land Disputes Courts Act, Cap. 216 to nullify the whole proceedings, quash the judgment and set aside the orders meted. Additionally, I order that the application No. 39 of 2021 be remitted to DLHT of Singida to be heard *de novo* by another chairman with a new set of assessors.

However, before I pen down, I wish to drop few lines to the gentlemen in dispute. Thus, in life, the most difficult thing is to recognise that, sometimes we too are blinded by our own incentives. This is because we do not see how our conflicts can work on us negatively. Indeed, this reminds me of the late Nelson Mandela's quote that:

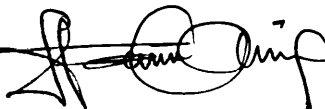

"All conflicts, no matter how intractable, are capable of peaceful resolution."

I am heartedly saying this to the old siblings in disputes. Thus, in their conflict which also touches some more members of the same blood, I wish, upon the God's consecration, they will find the way to finish their differences amicably through shake hands approach.

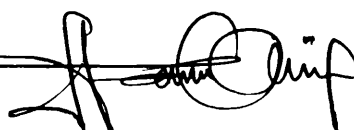

At the end, considering my desire to see this conflict amicably resolved, and the family tie is well restored, I make no order as to costs.

Ordered accordingly.

DATED at DODOMA this 4th day of April, 2024.



S. H. HASSAN
JUDGE
04/04/2024

This Judgment delivered this 4th day of April, 2024 in the presence of the parties.



S. H. HASSAN
JUDGE
04/04/2024