

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

LAND APPEAL NO. 88 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Tarime at Tarime in Land Application No. 70 of 2019)

BETWEEN

OYAKO OLUM ABOGE APPELLANT

VERSUS

JALANG'O OLUM AIRO RESPONDENT

JUDGMENT

22 March & 16 April, 2024

M. L. KOMBA, J.

This appeal traces its origin from the decision of the District Land and Housing Tribunal for Tarime at Tarime (DLHT) in Land Application No. 70 of 2019 where appellant applied for declaration that he is the rightful owner of the disputed land located at Bukwe Village in Rorya District. He claimed that respondent trespassed over the disputed land which is 3 acres. After heard both parties, DLHT decided that respondent was the rightful owner of the disputed land and dismissed application. Chairman was persuaded that respondent managed to prove his ownership from his grandfather then to his father who in 1986 gave the said land to the respondent. Chairman of DLHT declared the land belong to the respondent.

Dissatisfied by such decision, appellant filed petition of appeal to this court (Land Appeal No. 78 of 2021) with six (6) grounds. This court dealt with only one ground, ground no. 2 where appellant herein was the appellant in the previous appeal complained that the honorable chairman erred both in law and in fact by disregarding assessors' opinion without assigning reasons. Basing on that single ground and submission by parties, this court nullify proceedings and quash judgement and orders made before the District Land and Housing Tribunal in Land Application No. 70 of 2019. Further it was directed that Chairman to compose new judgement and state reasons to depart with opinion of assessors or otherwise within six months. The said order by this court was complied and Hon. Chairman composed another judgment which was delivered on 01 September, 2023. The judgment dissatisfied the appellant and decided to knock the door of this court with four grounds of appeal that;

- 1. That the honourable Chairperson erred both in law and fact by purporting to consider and thereafter differ with the opinion of the assessors while there is no written opinion of the assessor on record, the omission which prompted the High Court to quash the first judgment of the tribunal through Land Appeal No. 78 of 2021 between the same parties, but the learned Chairperson repeated the same error contrary to High Court directives.*

2. *That the honourable Chairperson erred both in law and fact by holding that the respondent is the lawful owner of the disputed land contrary to the evidence on record.*
3. *That the honourable Chairperson erred both in law and fact by holding that the appellant did not prove his case on the required standards.*
4. *That the honourable Chairman erred both in law and fact for failure to properly evaluate the evidence on record.*

When the appeal was called on for hearing on 22 March, 2024, both appellant and respondent appeared in person, without any representation and were ready for submission.

Appellant had a short submission that he was dissatisfied by the decision of the DLHT Tarime and pray this court to adopt and consider his petition of appeal. On the other side, respondent submitted that he did not trespass to the appellant land and prayed this court to dismiss the appeal.

Am tasked to decide whether the appeal has merit by considering all grounds in petition of appeal as directed in **Firmon Mlowe vs Republic**, Criminal Appeal No. 504 of 2020. This being the first appeal, this court has mandate and I shall re-evaluate evidence and asses coherent of witnesses. I find this comfort in **The Registered Trustees of Joy in The Harvest vs Hamza K. Sungura**, Civil Appeal No. 149 of 2017, CAT at Tabora (Unreported).

Starting with the 1st ground that Chairman did not assign reason for his departure from assessors' opinion as directed by High Court in Land Appeal No. 78 of 2021. The issue of composition of the DLHT and role of assessors is well provided under section 23 (1), (2), and 24 of the Land Disputes Court Act, Cap. 216 R.E. 2002 (the Act) that reads;

'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'***

*'24. In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it except that the Chairman **shall in the judgment give reasons for differing with such opinion.'** [Emphasis Added]*

From the provision of section 23 (1) and (2), the composition of the Tribunal has been listed 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 pronounce a decision which has incorporated those opinions. **See: Edina Adam Kibona vs. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported). It is trite that Chairman is not bound by assessors' opinion but has to give reasons why he differs with the said opinion.

Back to the case at hand, I have read the repeated judgment delivered on 01/9/2023 after this court directives and find at page 7 the following;

*Wajumbe wa Baraza wote wawili waliotoa maoni yao wakiwa upande wa mleta maombi kuwa mmiliki halali wa eneo lenye mgogoro. **Nimetofautiana na maoni ya washauri wa baraza kwasababu mleta maombi ameshindwa kutibitisha ni jinsi gani alipata umiliki wa eneo lenye mgogoro.***

From the above excerpt, it is uncluttered that Hon. Chairman provide reason for his departure from assessors' opinion that appellant failed to prove how he came into possession of the land in dispute. From this analysis I find the 1st ground is less of merit.

I shall join the 2nd 3rd and 4th grounds of appeal and analyse them together about holding that the respondent is lawful owner and evaluation of evidence. I have read the trial tribunal record during trial which found on page 3 to 10 of the typed proceedings. It is on record that appellant

informed trial tribunal that respondent trespassed to his three acres. When answering questions from assessors he responded that appellant and respondent are from the same clan and the respondent took appellant land and respondent father's land by force. The rest of his witness explained that respondent invaded into appellant's land without further explanation.

Respondent case started at page 13 and 20 and he was the first witness to give his evidence that he was given the said land by his father who was given by his grandfather and there is a house and the grave. Record shows as per respondent testimony it was on 2019 when the dispute arose when appellant wanted the village council to survey the disputed land and allocate to him. Respondent denied the process that's why they appeared in the DLHT for determination.

I further read the judgment by the Chairman of the Tribunal and find he analyse the evidence at page 5 and 6 and he based his decision in the side with heavier evidence. Respondent explained how he came into possession of the disputed land while appellant did not explain how he came into possession of the disputed land. Summary of the testimony was recorded in the judgment and was considered during decision. I find no need to fault the trial Chairman on analysis of the evidence during trial. From the analysis the combined grounds are also with less merit.

In generally, this court has considered and evaluated the evidence before it and is satisfied that there was no evidence skipped by the trial tribunal and the analysis was in order. There was no enough evidence that could make decision in favor of the appellant.

In the upshot, the appeal is dismissed as it is unmeritorious.

No order as to costs.



Nkk
M. L. KOMBA

Judge

16th April, 2024

Judgement delivered in chamber in the presence of both parties who appeared in person.

Nkk
M. L. KOMBA

Judge

16th April, 2024