**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**
**DODOMA SUB REGISTRY**
**AT DODOMA**

**LAND APPEAL NO. 4 OF 2022**

(Arising from Land Application No. 58 of 2018 before the District Land and Housing Tribunal for Iramba at Kiomboi)

**NG'AINDA AMSI .....APPELLANT**

**VERSUS**

**SETHIEL GWILA .....RESPONDENT**

**JUDGMENT**

Date of Last Order: 29/2/2024
Date of Judgment: 15/3/2024

**MASABO, J.:-**

The appellant herein is aggrieved by the decision of the District Land and Housing Tribunal for Iramba (the trial tribunal) which declared the respondent a lawful owner of a parcel of land estimated to be 30 acres located at Hilamoto village Mwangeza ward, Mkalama district in Singida. His appeal is based on seven (7) grounds of appeal which I summarize as follows: **One**, the procedure for transfer of the case from one chairperson to another was offended. **Two,** the judgment and decree of the trial tribunal are nullity for want of opinion of assessors. **Three,** the tribunal did not have proper quorum. **Four,** the respondent's evidence was weak contradictory and irrelevant. **Five,** the trial tribunal's judgment is a nullity as it contains neither an analysis of the evidence nor reasons for the judgment. **Six,** the

trial tribunal misconceived the concept of adverse possession. **Lastly**, the respondent's case was not proved to the required standards.

When the appeal came for hearing both parties had representation. The appellant was represented by Mr. Issaya Nchimbi advocate while Mr. Onesmo David, advocate represented the respondent.

At the commencement of the hearing Mr. Nchimbi abandoned the first and the fifth grounds of appeal and consolidated the 4th and 7th grounds of appeal and prayed to argue the remaining points separately. After being prompted by the court, he argued only the second grounds of appeal. In support of this ground, he submitted that the decision of the trial tribunal is invalid for want of opinion of assessors. He explained that, the judgment shows that it was composed in the absence of opinion of assessors as all of them had demised. However, to the contrary, the proceedings shows that the assessors were present. At page 30 of the proceedings, it shows that on 31st May 2022 the chairman addressed the parties to the effect that the assessors had passed away but at the same time the quorum shows that the assessors were present. The names of deceased and the present assessors were not disclosed.

He proceeded that, page 31 the proceeding shows that the trial tribunal sitting on 24th July 2022 had the presence of assessors whose names were not disclosed. Also, it shows that on 25th July 2022 the assessors were present and it was on that day when the application was scheduled for

judgment. He argued that, since the proceedings show that the assessors were present, it was incumbent for them to render their opinions as per the requirement of section 23(1) and (2) of the Land Dispute Courts Act, Cap 216 RE 2019 which mandatorily requires the assessors to give their opinion before the judgment. He concluded that the omission was not only fatal but invalidated the proceedings and the judgment. In support, he cited the case of **Edina Adam Kibona vs Absolom Swebe (sheli)** (Civil Appeal 286 of 2017) [2018] TZCA 310 TanzLII where it was held that the opinion of assessors is a mandatory requirement and its absence vitiates the proceedings.

In reply Mr. David having consulted the original record was quick to concede. He submitted that it is obviously difficult to reconcile the proceedings and what is stated in the judgment because the proceedings show that the assessors were present before the trial tribunal. Thus, it is not easy not easy to comprehend whether they were indeed dead or alive. He added that most confusing is the fact that the names of the deceased assessors and those alive were not disclosed. This confusion created a fatal irregularity and vitiated the proceedings. Based on this he prayed that the appeal be allowed on this sole ground.

I have considered the submissions by the parties as well as the trial tribunal's record. The sole question for determination is whether the judgment was reached in the absence of the opinion of assessors and whether such anomaly, if any, vitiated the trial court proceedings. While going through the

trial tribunal's record, I observed that, when the trial commenced on 23/5/2029, Hon. E.F. Sululu who was the presiding Chairman was assisted by two assessors who were identified with their respective single names as Mr. Masenga and Mr. Sankey although later in the proceedings for the same date they were identified as Mr. Joram F. Masenga and Mr. Paul M. Sankey. These two fully participated throughout out the trial until on 19/12/2019 when the last witness testified and the suit was then set for visitation of the *locus quo* on 11/1/2020.

It would appear that, thereafter, the suit lost track until on 1/3/2022 when it was called for mention and scheduled for another mention on 22/3/2022. On this date, the suit was set for another mention on 5/4/2022 and further mention on 10/5/2022. In all these dates the respondent was absent and having observed such absence with a great concern, the trial tribunal set it for another mention on 31/5/3022 on which date the suit was set for judgment. Further revelations from the record are that, the assessors (name undisclosed) were present on 1/3/2022 and on 5/4/2022 and on 31/5/2022 a date on which the event under scrutiny gained a different turn. The presiding Chairman, B.J. Shuma, vacated the order of visitation of locus in quo and notified the parties that, he has taken over the application as the chairman who heard it was no longer in office. He also notified them that the assessors who participated in the trial have demised hence no longer in office and having stated so, he set the application for judgment which was composed by him and delivered on 8/12/2022.

Section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216 deals with assessors and states that;

> (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**. [Emphasis is mine]

The requirement for the opinion of the assessors is further cemented under Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 which states thus;

> Notwithstanding sub-regulation (1) the Chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili.

These two provisions read together have been interpreted and applied in a plethora of cases (see **Ameir Mbarak and Azania Bank Corp Ltd v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 CAT (unreported); **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 [2018] TZCA 392 TanzLII and **Edina Adam Kibona vs Absolom Swebe** (supra). The consensus from these cases is that the participation of the assessors in the trial before the District Land and Housing Tribunal is mandatory and so is their opinion which, as per the provisions above, must be given in writing and read out to the parties before the composition of the judgment. There is also a consensus that the omission to obtain such opinions is a fatal

irregularity with the consequence of vitiating the proceedings and the judgment so entered.

From the trial tribunal's judgment and proceedings above abbreviated, it is crystal clear that the mandatory requirement above was offended as the opinion of the assessors were not obtained before composing the judgment. The reason for such omission is uncertain as on the one hand, it is shown that the assessors were no longer in officer following their demise but at the same time, it is shown that they were present. Hence, it is uncertain whether they were dead as purported or they were alive. Be it as it may, the omission and the uncertainty constituted a fatal anomaly and consequently vitiated the trial tribunal's proceedings by rendering them null.

In the foregoing, the second ground of appeal has merit and is allowed. Based on this sole ground, the appeal succeeds. The proceedings, judgment and decree of the trial court are consequently quashed and set aside for being a nullity. Considering the uncertainties as to the whereabouts of the assessors, I have found it just and fair to order, as I do, that record be remitted back to the trial tribunal and be placed before a different chairman for an expedited retrial. Order accordingly.

**DATED** and **DELIVERED** at **DODOMA** this 15th day of March 2024.


**J. L. MASABO**

**JUDGE**