

IN THE HIGH COURT OF TANZANIA

AT MWANZA.

MISC. LAND CASE APPEAL NO. 103 OF 2008

(From the Decision of the District Land and Housing Tribunal of Mwanza District, at Mwanza, in Land Case Appeal No. 9 of 2008 and Original Ward Tribunal of Namagondo Ward in Application No. 30 of 2002).

KACHELE MWAMBA.....APPELLANT

VERSUS

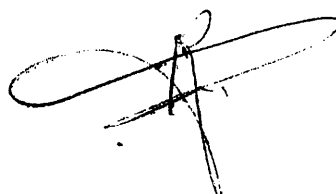
MATESO PAULO.....RESPONDENT.

JUDGEMENT.

Utamwa, J.

In this second appeal the appellant **Kachele Mwamba** appeals against the decision of the District Land and Housing Tribunal of Mwanza District, at Mwanza (the DLHT) in Land Case Appeal No. 9 of 2008, which said decision was in favour of the respondent, **Mateso Paulo**.

The brief facts of this matter go thus; in 2007 the respondent successfully sued the appellant before the Ward Tribunal of Namagondo Ward (the WT) in Application No. 30 of 2002 claiming that the appellant had encroached his land. The appellant was aggrieved by the decision of the WT and appealed to the DLHT for better justice; the DLHT upheld the decision by the WT. Still aggrieved, the appellant now appeals to this court. Before this court, the appellant preferred 4



grounds of appeal which the respondent objects. Both parties appeared before me unrepresented.

Having perused the record of the appeal in composing this judgement I found myself legally obliged to test the legal propriety of the Judgement of the DLHT before I test the merits of the appeal if need will arise. As I hinged above the appellant had filed four grounds of appeal before the DLHT, I quote them for a readymade reference though in a layman's language;

*"1. That the tribunal erred in law and fact for fixing the boundaries of the land in question by viewing the land only and without measuring tape or footsteps.*

*2. That the tribunal was biased as one of the members, the secretary was related to the respondent. Thus it was against the natural justice.*

*3. That the tribunal failed to weight the balance of probabilities that the respondent has not proved the evidence as the said land was claimed by the respondent's brother way back in 1994 but his claim was dismissed by the Nansio Primary Court vide Cr. Case No. 117/94 how come then the respondent claims the same land in 2007.*

*4. That the appellant is the lawful owner as he inherited the land from clan land which belong to his grandfathers as it was ruled out by the village council of Namagunda during reconciliation vide application no. 4 of 07".*

The judgement by the DLHT however, in essence indicated that the grounds of appeal by the appellant (against the decision of the WT) were only two, i. e. those numbered 1 and 3 above. The DLHT did neither mention the rest of the grounds of appeal before it nor state the reasons why it did not consider them as

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grounds of appeal. It only proceeded to briefly hear the parties, and then it framed a general issue, i. e *whether or not the ward tribunal properly decided the case*.

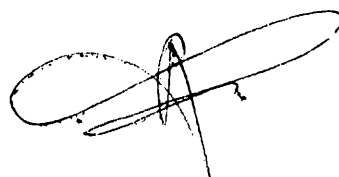
Again, according to its judgement the DLHT did not consider any of the grounds of appeal mentioned above by framing the necessary issue/s and make the finding thereto. The learned Chairperson of the DLHT after framing the general issue only recorded the opinion of assessors and proceeded to make a brief finding which I will also quote for ease of reference, it reads;

*"I have gone through the proceedings and decision by the ward tribunal, it is proved from the evidence by the respondent that the disputed land is belong (sic) to his late father who was in occupation of it until he died. It is also proved that the appellant only invaded it in 2004. In consideration to opinion by assessors this tribunal proceed (sic) to upheld (sic) the decision by the ward tribunal. Appeal is dismissed with costs. It is so ordered"*

It is the law that a judgment of any DLHT must mandatorily contain the following ingredients; a brief statement of the facts, finding on issues, a decision and reasons for the decision; see Regulation 20 (1) (a) – (d) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003, GN. No. 174 of 2003 (henceforth the Regulations). In fact, it is trite law now that these are the mandatory components defining the term "*Judgment*" see the decision of this court in **Tito Onesmo v. Martha Mkoni, Civil Appeal No; 25 of 2004, at Mwanza** following the case of **Sheikha v. Halima (1959) E.A 500**.

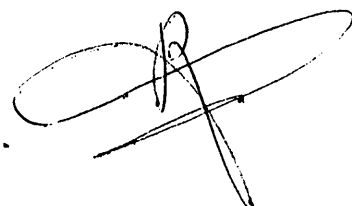
The issue here is thus *whether or not the decision by the DLHT did in fact comply with the law*.

As demonstrated above, the DLHT did not consider the grounds of appeal filed by the appellant before it, it did not thus frame any issue and it ultimately



made no finding in respect of those grounds, and no reason was adduced to justify that course. Again, though the DLHT made a finding in respect of its improvised general issue, no reason was adduced as to why it found the appellant's evidence before the WT as not satisfactory; it only briefly considered the evidence by the respondent and found that he had proved his case. If the DLHT found it necessary to frame the improvised general issue and test the merits of the appeal by considering the evidence on record (as it is seemingly did), then it had a duty, as the first appellate court to analyse the evidence of both sides and come to a finding upon adducing reasons why it was of the view that one side proved the case and the other did not. The DLHT however, did not perform its judicial duty in this indispensable procedure for not considering the evidence the appellant adduced before the WT.

The failure by the DLHT to give reasons for the above demonstrated course is against the principles of justice. In this respect the Court of Appeal once gave directives that it is a general principle of law of this country that, where the determination of the rights or obligations of a person is involved, the decision maker must give reasons for his decision, and further that the rationale for this rule is that *"if people are to be convinced that the decisions are just, they must be able to know the reasons on which they are based"*; see the case of **Ikindila Wigae v. Republic**, Criminal Appeal No; 60 of 2000, at Mwanza, following **Tanzania Air Services Ltd v. Minister for Labour, Attorney General and the Commissioner for Labour**, [1996] TLR. 217. This court also underscored this stance in the case of **Manfred Yotam Mwavea v. Frola Aron Mwaveya**, Misc. Civil Appeal No; 4 of 2006, at Mbeya. Again, emphasising this position my brother, **Moshi, J.** (as he then was) also remarked that transparency and justice are inseparable, and one of the essential components of transparency in the administration of justice is to give reasons for all the steps taken and all the orders

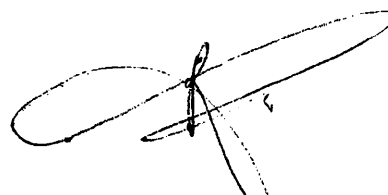
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made, he added that any step taken and any order made and any decision reached without assigning reasons must be quashed on appeal; see the case of **Gilbert Nzunda v. Watson Salale, Civil Appeal No; 29 Of 1997, at Mbeya** following the prudence of **Lord Howart, CJ, in Rex v. Sussex Jusices Ex-Perte Mccarthy (1924) 1K.B. at 259).**


For the above observations the judgement of the DLHT offended the law. The effect of this omission is that, the judgment is rendered to a no judgement at all because the violated provisions of law are couched in mandatory terms for, the word "*shall*" is applied into them, this term means in law imperative unless the interpretation to that effect causes a miscarriage of justice, which is not the case in the matter at hand for the reasons I adduced above; see S. 53 of the Interpretation of Laws Act (Cap. 1 R. E. 2002) and the decisions of the Court of Appeal of Tanzania in **Bahati Makeja v. Republic, Criminal Appeal No. 118 of 2006, at Dar es salaam** (unreported). See also the envisaging of the same court in **Herman Henjewe v. Republic, Criminal Appeal No; 164 Of 2005, at Mbeya** (unreported) and **Goodluck Kyando v. Republic, Criminal Appeal No; 118 of 2003, at Mbeya** (unreported) which followed its previous decision in **Fortunatus Msha v. William Shija and another, [1997], TLR 4.**

It must be alerted here that the legal principles pointed out herein above in respect of the obligatory formula for composing sound judicial judgements apply equally in both criminal and civil proceedings so long as both kinds of proceedings are meant to test the parties' rights in search of justice. The irregularities in the case at hand are thus incurable under the provisions of S. 45 of Cap. 216 for the reasons I have stated. I therefore, under S. 43 (1) (b) and (2) of Cap. 216 declare the judgement of the DLHT in question a nullity.

Having observed as above I find myself not obliged to test the merits of the appeal because; my finding above is capable of disposing of the entire appeal. I


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consequently set aside the decision of the DLHT. If the appellant still wishes, the appeal shall be heard afresh by a different set of the Hon. Chairman and gentlemen Assessors. I make no order as to costs because the parties to this appeal were not privy to the irregularities that have led to this decision. It is so ordered.



**JHK. UTAMWA.**  
**JUDGE**  
**At Dar es salaam.**  
**29/12/2011.**

Order; To be delivered in the High Court of Tanzania, at Mwanza on the date convenient to the court.



**JHK. UTAMWA.**  
**JUDGE**  
**At Dar es salaam.**  
**29/12/2011.**