

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 182 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for Kilombelo/Ulanga in Land Appeal No. 139 of 2018 (Hon. Mahelele, Chairperson))

JUSTINE MADEBE.....APPELLANT

VERSUS

ALLY SALEHE BONDI.....RESPONDENT

JUDGMENT

I. MAIGE, J

The appeal under discussion is against the decision of the District Land and Housing Tribunal for Kilombero/Ulanga (“the DLHT”) reversing the decision of the ward tribunal for Signal (“the trial tribunal”) which had declared the appellant the lawful owner of the **suit property**. In his petition of appeal, the appellant has raised five grounds to challenge the decision of the **DLHT**. In the third ground of appeal which is capable of disposing of the appeal, the decision of the **DLHT** is challenged for departing from the opinions of assessors without assigning reasonable grounds.

On the date of hearing, Miss. Loveness, learned advocate represented the appellant. The respondent appeared in person and was not represented.

With my direction, the appeal was disposed of by of written submissions.

In her submissions in support of the third ground of appeal, Miss Loveness informed the Court that, while the gentle assessors gave detailed opinions advising the presiding chairperson to dismiss the appeal for want of merit, in his judgment, the **trial tribunal** departed from their opinions on a sweeping statement that they had not assessed the evidence properly. She submits that, there is no even a single statement in the judgment of the **DLHT** disclosing the reason for departure. She submits therefore, in departing from the opinion of assessors without assigning reasons, the judgment is fatally defective for offending the mandatory provision of section 24 of the Land Courts Disputes Act, Cap. 216, R.E. 2002 ("the LCDA"). She thus invites the Court to allow the appeal on that ground.

In his submissions in reply, the respondent while does not doubt the mandatory requirement that a chairperson cannot depart from the opinions of the assessors without assigning reason therefor, it is his contention that, the presiding chairperson assigned the reasons for departure. He prays therefore that the appeal be dismissed with costs.

I have considered the rival submissions and examined the judgment and proceedings of the **DLHT**. I will now direct my mind on the third ground as

to consideration of the opinions of assessors. In accordance with the proceedings of the **DLHT**, the oral hearing of the appeal was conducted on 9/07/2019. On the said date, the Chairperson sat with two assessors namely; Omary and Mhomela. In their opinions on the record, both of them advised the chairperson to uphold the decision of the **trial tribunal** as the evidence adduced by the appellant was sufficient to prove his case. In particular, the gentle assessor Mr. Omary, considered in his opinions, the sketch map of the suit property and the evidence adduced.

In his judgment, it would appear to me, the presiding chairperson did not make any consideration on the evidence in the sketch map. He has just made a sweeping statement that, he is departing from the opinions of the gentle assessors without remarking on the substance of the evidence on the basis of which the opinions were made. I agree with Miss Loveness that, that cannot amount to compliance with the provision of section 24 of the **LCDA**. The presiding chairperson was bound to assign reasons why does he depart from such opinion.

Under section 23 and 24 of the **LCDA**, the **DLHT** is duly composed if it is presided over by a chairperson sitting with at least two assessors. The **trial**

chairperson is obliged to consider the opinions of the gentle assessors. In case of departure, he or she is bound to assign reasons therefor. In this matter, the chairperson ignored the role of the assessors in the decision making. Since consideration of the opinions of assessors is an essential ingredient of a decision of the **DLHT**, omission to consider the same is a fatal irregularity which goes to the root of the jurisdiction of the tribunal and thereby vitiating the decision and proceeding thereof.

It is on the foregoing reasons that, I uphold the third ground of appeal and nullify the judgments and proceedings of the **DLHT**. The file is hereby remitted to the **DLHT** for determination of the Appeal No. 139 of 2018 before a different chairperson. In the circumstance, I cannot determine the other grounds of appeal which go to the substance of the decision. Since the issue has been raised by the court in its own motion, I will not give an order as to costs.

It is so ordered.



I. MAIGE

JUDGE

16/04/2020

Date 16/04/2021

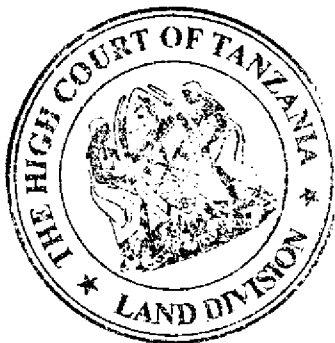
Coram: Hon. S.H. Simfukwe - DR.

For the Appellant: Miss Loveness Nyumayo, Advocate

For the Respondent: Present in person

RMA: Bukuku

COURT: Judgment delivered this 16th day of April, 2021.




S.H. Simfukwe
DEPUTY REGISTRAR
16/04/2021

**MAHAKAMA KUU YA TANZANIA
(DIVISHENI YA ARDHI)**

MISC. LAND APPEAL NO. 182/2019

*(Yanatokana na Maamuzi ya baraza la Ardhi Makazi na Nyumba Wilaya
Kilombelo/Ulangu katika Rufaa Na. 139 ya 2018 mbele ya Mheshimiwa Mahele,
(Mwenyekiti)*

JUSTINE MADEBE.....MRUFANI

DHIDI YA

ALLY SALEHE BONDIMRUFANIWA

MUHTASARI WA MAAMUZI

I. MAIGE, J

Hii ni rufaa ambapo mrufani Justine Madebe anapinga uamuzi uliofanywa na Baraza la Ardhi Makazi na Nyumba Wilaya Kilombelo/Ulangu ambalo lilimtangaza mrufaniwa kuwa mmiliki halali wa mali bishaniwa katika hatua ya kusikiliza rufaa kutoka baraza la kata. Ambapo moja ya sababu ya msingi ya mrufani ni kuwa mwenyekiti wa Baraza la ardhi na Nyumba Wilaya alienda nje ya maoni ya wazee wa baraza kinyume na utaratibu na bila kutoa sababu za kufanya hivyo.

Baada ya kusikiliza pande zote mbili Rufaa ilikubaliwa kwa sababu:-

1. Mwenyekiti hakuzingatia maoni ya wazee wa baraza lake na hakutoa sababu za kwenda kinyume nao.
2. Kutozingatia maoni ya washauri katika Baraza la ardhi na nyumba ni dosari kubwa sana inayoathiri maamuzi ya baraza na kuyafanya kuwa batili.

Muhtasari huu umetolewa na,

**Ofisi ya Naibu Msajili Mfawidhi wa Mahakama Kuu Divisheni ya
Ardhi**

Angalizo

- 1. Lengo la Muhtasari huu ni kusaidia kuelezea maamuzi ya Mahakama katika lugha rahisi ya Kiswahili.*
- 2. Muhtasari huu ni kwa ajili ya taarifa tu na hivyo hauna nguvu ya kisheria*
- 3. Uamuzi kamili wenye nguvu ya kisheria unapatikana katika tovuti ;
<https://tanzlii.org/tz/judgments>.*

