

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPEAL No. 21 OF 2019

(Arising From the Judgment of the District Land and Housing Tribunal for Morogoro, at Morogoro, Appeal No. 100 of 2018, delivered by Hon. O. Y. Mbega, Chairman, on 21st February, 2019)

MUSSA SELEMANI SALA		APPELLANT
VERSUS		
SUDI ALLY STAMBULI		RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

The appellant, Mussa Selemani Sala was aggrieved by the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro (“the first appellate tribunal”) , in Appeal No. 100 of 2018 (“the first appeal”), delivered by Hon. O. Y. Mbega, Chairman, on 21st February, 2019. He has lodged this appeal on the following grounds:

1. That the Learned Tribunal Chairman misdirected himself in consolidating the grounds of appeal *suo mottu* at the stage of writing the judgment thereby ignoring the submissions in respect of the other grounds which he abandoned
2. that the Learned Tribunal Chairman misdirected himself in regarding the matter as a dispute over boundaries while in fact the dispute is on ownership of a piece of land the Respondent has trespassed over.
3. That the Learned Tribunal Chairman erred in law and fact in deciding that the question of age of the Respondent was not at

issue in the Ward Tribunal while in fact it was raised by the Appellant and formed part of the proceedings of the Ward tribunal.

4. That the Learned Tribunal Chairman erred in law and fact in deciding that the portion of land in dispute belongs to the respondent in the absence of proof of acquisition.
5. That the Judgment of the District Land and Housing Tribunal is defective for being vague and not reflective of the dispute between the parties.

On those grounds, it was the appellant's prayer that:

1. That the honourable court be pleased to set aside all orders arising from and being subsequent to the judgment of the tribunal
2. That the Honorable Court be pleased to order the appellant's case before the tribunal be heard on merits
3. Costs of the appeal be provided for.
4. Any other order(s) that deem just in the circumstances of the appeal.

In this appeal, the appellant's submissions were drawn and filed in gratis by Mr. R. Mollel, learned advocate while the respondent's submissions were drawn and filed by Mr. Goodchance Lyimo, learned advocate. I appreciate the rival submissions filed by both parties. However, on my part, as I was going through the records of the tribunal, I have noted some irregularities which goes to the root of the matter at hand hence I postponed the judgment and when the matter came for judgment on the 25/01/2021, I asked the parties to address me on the discrepancies on the records of the trial tribunal with regard to dates of the trial and the date of judgement. Only Mr. Lyimo, for the respondent, was present and his submission was that he didn't get a copy of the proceedings at

the tribunal and was not present during trial. The appellant was absent without notice so I proceeded to construct this judgment without his submission.


Coming back to the discrepancies I observed, they were such that the judgment of the trial Ward Tribunal is dated the 06/06/2018 and were signed by all members, meaning that this was the day that the said judgment was actually delivered. However, the records further show that the respondent's case (then complainant) was heard on the same date the judgment was delivered while the appellant's case (then respondent) was heard on the 02/09/2018, a day after the judgment was delivered. It goes without saying that by the time the tribunal was hearing the appellant's case, it had already constructed its judgment without hearing the respondent's (appellant herein) case.

The records further show that the tribunal visited the locus in quo on the 25/05/2018 but there was no order that the visit will be on that date. Looking at the sketch of the visit, the tribunal had already made conclusion by labelling the map "kiwanja chenye mgogolo cha Sudi", meaning that by the time they visited the locus, they had already made a decision that the land belongs to the respondent while the appellant's case was heard almost 4 months later. The decision was also made on 06/06/2018 before the appellant's case was heard.

The interpretation of that is that the tribunal was biased and had made a decision in favour of the respondent herein before even hearing the appellant's case. That being the case, I find that the whole proceeding and decision of the Ward Tribunal was tainted with illegality and irregularities. I am therefore left with no choice but to nullify the proceedings and decision of the trial tribunal and the subsequent

judgment and decree of the first appellate tribunal. If any party is still interested in pursuing their rights, they should do in a court with competent jurisdiction to try the matter. It is also important to clarify that the position of the parties with regard to the disputed land goes back to the original position that it were before the Case No. 53/2018 was filed at the Ward Tribunal. The appellant shall have his costs for this appeal.

Dated at Dar es Salaam this 15th day of March, 2021.


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S.M MAGHIMBI
JUDGE