

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 139 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for Kilombelo/Ulanga in Land Appeal No. 223 of 2016 (Hon. Rugarabamu, Chairperson))

LEAH CRETUS MSOPOLE.....APPELLANT

VERSUS

ALLY H. MAHIMBALI.....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 Lumemo ("the trial tribunal") which had declared the appellant the lawful owner of the **suit property**. In her petition of appeal, the appellant has raised four grounds. In the first ground which in my view is capable of disposing of the matter, the decision of the **DLHT** is challenged for departing from the opinions of assessors without assigning reasonable grounds.

On the date of hearing, the appellant appeared in person and was not represented. She adopted, in her submissions, the grounds in the petition of appeal and urged the Court to sustain the appeal. On his part, the respondent was represented by Mr. Kusalika, learned advocate. He conceded in his oral submissions that, the chairperson did not, in his judgment, assign reasons why he departed from the opinion of the gentle assessors.

On my part, I am in agreement with the learned counsel on the first ground of appeal. While the chairperson differed with the opinions of assessors which is permitted, he did not, as section 23 and 24 of the Land Disputes Courts Act, Cap. 216, R.E, 2019 requires, assign reason for departure. The requirement under the respective provision, it is now settled, is mandatory non compliance of which vitiates the judgment and proceedings of the **DLHT**. There are many authorities in support of this position. See for instance, the decision of the Court of Appeal in **Edna Adam Kibona vs. Absolom Swebe (SHELI)**, **Civil Appeal No. 386 of 2017 (CAT-Unreported)**

It is on the foregoing reasons that, I uphold the first ground of appeal and nullify the judgment and proceedings of the **DLHT**. The file is hereby remitted to the **DLHT** for determination of the appeal before another chairperson with a different set of assessors. I shall not, in the circumstance, consider the remaining grounds of appeal. I will as well not give an order as to costs in the circumstance.

It is so ordered.



I. MAIGE
JUDGE
29/04/2021

Judgment delivered in the presence of the appellant in person and advocate Augustine Kusalika, for the respondent this 29th day of April, 2021.



I. MAIGE
JUDGE
29/04/2021