

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO. 216 OF 2017

BATHOLOMEO PAULO CHIZA.....APPELLANT

VERSUS

ESAU WILLIAM NDIZE..... 1ST RESPONDENT

NATIONAL MICROFINANCE BANK.....2ND RESPONDENT

ONESMO STEPHANO.....3RD RESPONDENT

MSOLOPA INVESTMENT.....4TH RESPONDENT

JUDGMENT

14/04/2021 & 23/04/2021

I. MAIGE, J

In this appeal, the appellant is appealing against the decision of the District Land and Housing Tribunal for Kinondoni in Consolidation Land Application No. 298/2013 and 376/2014. The appeal is premised on six grounds. In the fourth ground which in my view is capable of disposing the appeal, the trial chairperson is faulted in departing from the opinions of assessors without assigning reasons therefor.

In his submissions through his advocate, Mr. Samuel Shadrak Ntabaliba, the appellant contents that while the gentle assessors gave opinions in support of his case, the trial chairperson departed from such opinions unreasonably. In his humble view, the omission affect the validity of the judgment and proceedings of the trial tribunal. To substantiate his contention, the counsel referred the authority of the Court of Appeal in **TUBONE MWAMBETA VS MBEYA COUNCIL Civil Appeal No. 287 Of 2017 (Unreported)** where it was stated as follows:-

"As expressly stated under the law, the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the tribunal, it embraces giving their opinions before the determination of the dispute as such, their opinion must be on records"

In his submissions in refutation, Mr. Daibu Kambo, learned advocate who represented the 2nd and 4th respondents was of the contention that contrary to the claim for the appellant, the opinions of the assessors were duly considered. Attention of the Court was drawn to page 15 of the judgment where the trial chairperson remarked as follows:-

"My wise assessors have opined in favour of the applicant, however I differ with their opinion as demonstrated hereinabove"

I have duly considered the rival submissions and it is appropriate that I resolve the issue. The principle of law set out in **Tubone Mwambeta** (*supra*) which is absolutely binding to me is that, for the mandatory requirement under provision of regulation 19 (2) of the Land Disputes Courts Act to be complied, the opinions of the assessors must be offered in the presence of the parties so as to enable them to know the nature of the opinion. A similar position was stated in **Edna Adam Kibona vs. Absolom Swebe (SHELI)** (*supra*) where it was observed as follows:-

We wish to recap at this stage that in trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of evidence, in terms of Regulations 19(2) of the Regulations, the Chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili. That opinion must be in record and must be read to the parties before the judgment is composed.

I have gone through the proceedings of the **trial tribunal**. I agree with the counsel for the appellant that such requirement was not complied as required in the authority just referred. It is apparent from the record of the trial tribunal that, on 21st August 2017, the trial chairman placed the matter for judgment on 26th September 2017 with direction that assessors should give their opinions. On the said date, the proceedings do not suggest presence of any of the assessors. Similar so on 26th September

2017 when the matter placed for on 30th October 2017. The same applies on the date of judgment. Both the typed and handwritten proceedings are mute if any of the assessors opined. Therefore, this being the Court of record, in the absence of such opinions on the record, it cannot, basing on mere submissions from the bar, infer that such opinions were presented in the manner as directed in the authority just referred.

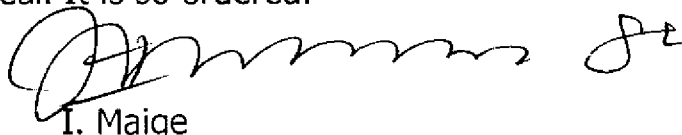
Admittedly, in file of the trial tribunal, there is a handwritten opinion which would appear to be of one of the assessors. It is signed on 20th September 2017. Soon after the signature, there is a following remarks which appear to be made by one of the assessors on 21/09/2017:-

"Kwa maelezo na ushahidi wote uliotolewa katika shauri hili ninakubaliana na maoni yaliyotolewa na mjumbe mwenzangu aliyetanguliwa".

With respect to the trial chairperson, what he treated the opinions of assessors cannot in law amount as such. A gentle assessor is required to give his personal opinion based on his personal participation in the trial. As a judge of the fact, he is expected to independent. His opinion should not be influenced by any person including the trial chairman and his fellow assessors. In this matter, one of the assessors has been influenced by an opinion of his fellow assessor. He appears to have read the opinion of his

fellow before giving his. This by itself would affect the credibility of the proceedings of the trial tribunal.

In my opinion therefore, the judgment and proceedings of the trial tribunal were void for non-compliance with the mandatory requirement of regulation 19(2) of the Land Disputes Courts Act. The appeal therefore succeeds to the extent as aforesaid. The judgment of the **trial tribunal** is hereby set aside and the proceedings thereof quashed. The file is hereby remitted to the **trial tribunal** for retrial before another chairperson and a new set of assessors. I shall not consider the other grounds of appeal in the circumstance. The respondents shall pay the costs of prosecuting the appeal. It is so ordered.



I. Maige

JUDGE

23/04/2021

COURT:

Judgment delivered in the presence of the Paul Mtui/Samwel Shedrack, Advocate learned counsel for appellant and in absence respondent.



I. Maige

JUDGE

23/04/2021