

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO.01 OF 2021

(Arising from the District Land and Housing Tribunal for Ilala at Ilala in
Land Appeal No.29 of 2020, originating from Vingunguti Ward Tribunal in
Land Case No.188 of 2020)

CHRISTINA NGANO SHOO APPELLANT

VERSUS

REHEMA JUMA KILONGOLA RESPONDENT

JUDGMENT

Date of Last order: 26.07.2021

Date of Judgment: 29.07.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Vingunguti in Land Case No.188 of 2020 and arising from the District Land and Housing Tribunal for Ilala in Land Appeal No. 29 of 2020. The material background facts to the dispute are briefly as follows; Shoo

Christina, the respondent in this appeal lodged a Land Case No.188 of 2020 at Vingunguti Ward Tribunal claiming that Rehema Juma Kiliongolo has trespassed her land and constructing a house in front of her premises. The respondent denied the allegations. The respondent claimed that she is the lawful owner and extended the building in her own plot. The Ward Tribunal decide the matter in favour of the appellant, the respondent was ordered to vacate the suit land.

Aggrieved, the appellant appealed to the District Land and Housing Tribunal for Ilala, at Ilala vide Land Appeal No.29 of 2020 challenging the judgment of the trial tribunal in Land Case No. 188 of 2020. The appellant complained that the trial tribunal faulted itself in deciding in favour of the respondent. The District Land and Housing Tribunal found that the Ilala Municipal Council issued a Residential Licence to the respondent. Therefore the appellate tribunal overruled the decision of the trial Tribunal and declared the respondent a lawful owner of the suit land. The first appeal irritated the appellant. She thus appealed to this court through Land Appeal No.01 of 2021 on four grounds of grievance, namely:-

1. *That the Hon. Chairperson erred in law and fact for relying on the respondent's Residence license which basically not include the disputed land.*
2. *That the Hon. Chairperson erred in law and facts for deciding the appeal based on cooked evidence.*
3. *That the Hon. Chairperson erred in law and facts by considering the evidence Vigunguti map which shows the allocation of plots, and actually, the plot of the respondent is No. 19/119 and my Plot is No. 19/127 and between those two plots, there is a public way.*
4. *That, the Hon. Chairman erred in law and facts for failure to note that the disputed land is owned by the appellant and the appellant left a small part of plot..*

When the appeal was called for hearing on for hearing on 30th March, 2021, the appellant and the respondent appeared in person, unrepresented. By the court order and consent of the parties, the appeal was argued by way of written submissions whereas, the appellant filed his submission in chief on 19th April, 2021 and the respondent was ordered to file a written submission on 03rd May, 2021 but she did not comply with

the court order. Therefore, this court proceeds to determine the matter *ex parte* against the respondent.

The appellant opted to combine the first and third grounds and argue them together and opted to argue the remaining grounds separately. Submitting on the first and third ground that relates to the respondents' licence. She argued that the disputed land does not form part of her land. She went on to state that the purported residence licence contains some conditions which the respondent is required to follow such as the owner shall respect the boundaries. The appellant complained that in the instant case the respondent did not respect the boundaries as a result she build in front of her house.

The appellant went on to state that it is indisputable fact that the appellant and respondent own land, however, what is disputed is the boundaries. The appellant went on to claim that the respondent's residence licence was expired and she did not pay fee for renewal. To bolster her position she cited section 23 (3) (c) of the Land Act No.4 of 1999 and she also referred this court to Vingunguti map which shows the boundaries.

On the second ground, the appellant complained that the Chairman erred in law and facts for deciding the appeal based on cooked evidence. The appellant lamented that the disputed land was related to issues of boundaries, thus, in his view, the Chairman was required to visit *locus in quo* in order to be in a better position to determine the actual owner of the disputed land. Fortifying her submission, the appellant cited the case of **Nizar Ladak v Gulamali Fazali Johnmohamed** [1980] 29.

Submitting on the last ground that relates to the appellant is the lawful owner of the disputed land. She claimed that she is a legal owner of Plot No. 19/127 locate at Vingiguti, Dar es Salaam and she has paved a pass by way. She valiantly submitted that the act of the respondent to build on his plot violated her ownership rights.

In conclusion, the appellant urged this court to quash the decision of the appellate tribunal and allow the appeal with costs.

Before composing my Judgment, I have noted a point of law thus, I called upon the parties to address me. I informed the appellant that in the tribunal proceedings, the Chairman proceeded to compose a judgment and referred to one of the assessor's opinion, however, the Chairman did

not record the assessors opinion in the tribunal proceeding. The appellant had nothing to say rather they left the matter in the hands of this court to decide.

Having heard the submission of the appellant, I should state from the outset that the appeal before this court has merit to the extent that there is a point of law that merits the appeal. Reading the handwritten proceeding of District Land and Housing Tribunal for Ilala specifically on the last page of the records, the Chairman recorded the submission of both parties, then, on 8th September, 2020 the Chairman set the judgment date and recorded that the assessor opinion. Thereafter on 13th October, 2020 the Chairman proceeded to pronounce the judgment. The Chairman on 8 of his judgment stated that Mr. Mwakalasya, one of the assessors gave the same opinion. However, the same opinion was not featured in the tribunal proceedings; the Chairman did not file the assessor's opinion. In other words, there is no record that the assessor's opinion was read over before the parties.

The Court of Appeal of Tanzania in numerous cases stated that the assessors' opinion must be expressly indicated in the record. In the case of **Hamisa S. Mohsin v Taningra Contractor** Land Appeal No. 133 of

2009 where the Chairman did not indicate what opinioned, the judgment was null and void and in the case of **Edina Adam Kibona v Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 it was held that:-

*“... the opinion of assessors must be given in writing **and be reflected in the proceedings** before a final verdict is issued”.*

[Emphasis added].

Equally, the Court of Appeal of Tanzania in the case of **Ameir Mbarak and Azania Bank Corp Ltd v Edgar Kahwili**, Civil Appeal No. 154 of 2015 (unreported) held that:-

“Therefore in our considered view, it is unsafe to assume the opinion of assessors which is not on the record by merely reading the acknowledgment of the Chairman in the judgment.

In the circumstances, we are of a considered view that assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity.” [Emphasis added].

Similarly, in the case of **Tubone Mwambeta v Mbeya City Council**, Civil Appeal No 287 of 2017 (unreported), the Court of Appeal of Tanzania stated that:-

"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors,...they must actively and effectively participate in the proceedings so as to make meaningfully their role of giving their opinion before the judgment is composed...since regulation 19(2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether Page 4 of 6 or not such opinion has been considered by the Chairman in the final verdict."

Applying the above authorities in the instant case, it is clear that the original record has not the opinion of assessors in writing which the chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in the view of the fact that the records do not show that the assessors were required to give them, I fail to understand how and at what stage the assessors' opinion found their way into the Tribunal's judgment.

Moreover, assessors' opinions cited by the Chairman in his judgment were not read in the presence of the parties before the judgment was

composed, therefore, the same has no useful purpose. Under the circumstances, the judgment of the Tribunal is found to be improper. Inspired by the incisive decisions quoted above, applying the same in the instant appeal, it is evident that a fundamental irregularity was committed by the tribunal Chairman. Thus, there is no proper judgment before this Court for it to entertain in appeal. I shall not consider the remaining grounds of appeal as the same shall academic exercise. I shall not consider the remaining two grounds of appeal as the same shall be an academic exercise after the findings I have made herein.

Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing Tribunal for Ilala in Land Appeal No.29 of 2020 in the following manner:-

- (i) The proceedings in Land Appeal No. 29 of 2020 and the orders made thereof are hereby quashed.
- (ii) I remit the case file to the District Land and Housing Tribunal for Ilala to proceed before the same set of assessors.

- (iii) The matter to proceed at the District Land and Housing Tribunal for Ilala before another Chairman who will proceed to compose a new judgment within 6 months from today.
- (iv) No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 27th July, 2021.


A.Z.MGEYEKWA
JUDGE
27.07.2021

Judgment delivered on 27th July, 2021 in the presence of both parties.




A.Z.MGEYEKWA
JUDGE
27.07.2021

Right to appeal fully explained.