

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

**LAND APPEAL NO.60 OF 2020**

*(From the Decision of the District Land and Housing Tribunal of  
Kinondoni District at Mwananyamala in Land Case No. 286 of 2008,  
before Hon. Mbilinyi R)*

**SECHELELA SIMON MAZENGO (Administrator of the Estate of  
the late Simon Mazengo) .....APPELLANT**

**VERSUS**

**MASHAURI JEREMIA MABULA.....1<sup>ST</sup> RESPONDENT**

**SABINA CHARLES MASHAURI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**OPIYO, J.**

In 2006, 30<sup>th</sup> November, the 1<sup>st</sup> respondent, Mashauri Jeremiah Mabula was allocated land by the Kinondoni Municipal Council, namely, Plot No. 458 Block E, Goba Area. This followed his application in 2005 when the Council announced the Project of Surveyed Plots at Goba area within Kinondoni District.

Mr. Simon Mazengo on the other, now deceased, was the respondent at the trial tribunal had claimed to have ownership of the suit land after purchasing the same from one Omary Zamba Ngaluma in 1997. He settled on it and has built two houses therein. It was pleaded that, when the project came to the area, he was not adequately compensated by the Kinondoni Municipal Council, hence, refused to vacate the premises and

that resulted into this dispute which was successfully entertained in favour of the respondents by the Kinondoni District Land and Housing Tribunal.

Now, Sechelela Simon Mazengo being the Administratrix of the late Simon Mazengo, has preferred this appeal on his behalf. The following are the grounds of this appeal.

1. That, the trial tribunal erred in law and facts by failure to indicate, show and consider what was observed in the *Locus in quo*.
2. That, the trial tribunal erred in law and facts by failure to consider the evidence adduced by the appellant and his witnesses.
3. That, the trial tribunal erred in law and facts by failure to provide for the right to appeal and its time frame to the appellant.
4. That, the trial tribunal erred in law and facts by ordering that the respondent is a lawful owner of the disputed land without any proof of ownership.
5. That, the trial tribunal erred in law and facts by ordering the appellant to be evicted on the suit land while there is no sufficient evidence that he was compensated.
6. That, the trial tribunal erred in law and facts by admitting and relying on the poor evidence of the land officer.
7. That, the trial tribunal erred in law and facts by considering the case in contravention of Regulation 19(2) of the District Land and Housing Tribunal G.N. 174/2002.

In disposing this appeal, prefer to start with the seventh ground of appeal as it challenges the conduct of the proceedings of the trial court. On this

ground it was submitted that by Kurubone Pansensa, counsel for the appellant that, the proceedings of the trial tribunal did not include the assessors' opinions though they were acknowledged in the judgment. That, this is contrary to Regulation 19(2) of the District Land and Housing tribunal Regulations, GN No. 174/2002, he argued. He therefore prayed for the same to be quashed in terms of the authority in the case of **Edna Adam Kibona versus Absalom Swebe (Sheli), Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania at Mbeya, (unreported) where it was held that,**

*“they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed..... since Regulation 19(2) of regulations required 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 has been considered by the chairman in the final verdict”.*

In reply, Mr. Amani Joachim for the respondents was of the view on the 7<sup>th</sup> ground that the assessors were involved in the decision making at the trial tribunal as seen at page 7 of the judgment, therefore regulation 19(2) of the District Land and Housing tribunal Regulations, GN No. 174/2002 was not violated. He argued that, even if the court finds that the assessors were not involved, it should invoke the rules laid down in **Yakobo Magoiga Gichere versus Peninah Yusuph, Civil Appeal No. 55 of 2017, Court of Appeal of Tanzania, at Mwanza (unreported)** to save the proceedings. That, it should embrace the spirit of substantive justice and do away with the technicalities like this as pointed out by the appellant in the 7<sup>th</sup> ground of this appeal.

In his rejoinder the applicant added that, since the respondents did admit in their reply submissions that then their appeal should be dismissed as the overriding objective principle is not applicable where there are procedural irregularities like the one in issue. Therefore, the case of **Magoiga Gichere (supra)** is distinguishable in these circumstances and this appeal should be allowed.

After going through the submissions of both parties through their Advocates, and also a through perusal of the records at hand in relation to this ground. In this ground the appellant have faulted the trial tribunal for contravening regulation 19 (2) of the District Land and Housing Tribunal as provided in G.N No. 174 of 2002. The issue here being whether the assessors did properly participate in the impugned decision or judgment of the trial tribunal. The law on the said provision states

*"Notwithstanding sub-regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili."*

I went through the case file of the trial tribunal to find where I came across the opinion A.B Mbakileki as noted in the judgement of the trial tribunal at page 7. The said opinion is dated 31<sup>st</sup> January 2019. The judgment appears to have been delivered on 11/3/2019, while the last order was on 15/10/2018, where the judgment was to be delivered on 22/2/2019. The records do not show if the chairman of the trial tribunal required the assessors to write their opinion and cause them to be read over to the parties. Even if we rely into the said opinions of Mrs. Mbakileki, the same obstacle will appear apparent on our face as it is not on record if the same were read over to the parties before the same were included

in the judgment. Left unattended like in this case, the opinions form part of the tribunals' judgment as there is no order from the Chairman requiring the same to be prepared by the assessor in question (Mrs. Mbakileki). This is the spirit of the law as explained in the case of **Edna Adam Kibona versus Absalom Swebe** (supra). I further prefer at this stage to quote with emphasis the observations of the Court in the same case as found at page 6 paragraph two as follows;-

*"For avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing tribunal purports to refer them in his judgment. However, in view of the fact that he records do not show that the assessors were required to give them, we fail to understand how and what stage they found their way in the court record. And in further view of the fact that they were not read in the presence of the parties before the judgment was composed, the same have no useful purpose."*

In line with this decision, I find the 7<sup>th</sup> ground of appeal to have merit and allow it accordingly as the irregularity so pointed out in that ground of appeal is fatal. And for the purpose of saving time and energy, I would pen off here as that ground alone is enough to dispose of the entire appeal and reach necessary decision as far as this appeal is concerned. Therefore, I see no need to dwell on the remaining six grounds of appeal.

For the reasons herein above, I proceed to nullify the proceedings, judgment and decree of the District Land and Housing Tribunal for Kinondoni. I consequently order for trial *de novo* before another Chairman and a new set of assessors. Each party shall bear own costs.

Ordered accordingly.



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**M. P. OPIYO,**  
**JUDGE**  
**10/3/2021**