

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

**LAND APPEAL NO. 51 OF 2020**

(Originating from Mkuranga District Land and Housing Tribunal in Land Application No.04 of 2019)

**SALUM SAID PAZI.....1<sup>ST</sup> APPELLANT  
AMIRI SAID PAZI.....2<sup>ND</sup> APPELLANT  
BI. NYAKAMBANGWA.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**KIDAWA HASSAN KIWINGIA** (Administratrix of the  
Estate of the Late Mariam Hamis Pazi) .....**RESPONDENT**

Date of Last Order: 03.12.2021  
Date of Ruling: 16.12.2021

**JUDGMENT**

**V.L. MAKANI, J**

The appellants named above are appealing against the decision of Mkuranga District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 04 of 2019 (Hon.Mwakibuja, Chairman).

At the Tribunal respondent herein was claiming against the appellants for ownership of land measuring two acres located at Kalole Village, Kisiju Ward within Mkuranga District (the **suit land**) being the property of the Late Mariam Hamis Pazi. The appellants being dissatisfied with the decision of the Tribunal have preferred this

appeal on eight grounds of appeal as reflected in the Amended Memorandum of Appeal. The said grounds of appeal are reproduced herein below:

- 1. That the honourable Trial Tribunal erred both in law and fact by entertaining an application in which the tribunal had no pecuniary jurisdiction.*
- 2. That the Honourable Trial Tribunal erred in both law and fact for failure to compile opinion of assessors.*
- 3. That the honourable trial tribunal erred in both law and fact for failure to read out opinion of assessors before the parties.*
- 4. That the Honourable Land Tribunal erred in both law and fact for failure to state reasons for disagreeing with the opinion of assessor by the name of Kihula.*
- 5. That the honourable Trial Tribunal erred in both law and fact for entertaining and reaching a decision on the same issues between respondent and the first appellant which was previously heard and decided by the same Chairperson in Mic. Application Appeal No.25 of 2017.*
- 6. That the honourable trial tribunal erred in both law and fact in concluding that respondent had good title hence the owner of the disputed title.*
- 7. That the honourable trial tribunal erred in both law and fact in reaching a decision based on uncorroborated evidence adduced by the respondent.*
- 8. That the honourable chairman erred in both law and fact by her findings that the appellant admitted that their grandfather gave the disputed suit land to the respondent grandmother.*

This appeal was argued by way of written submissions. The parties personally drew and filed their submissions.

In arguing the appeal, the appellants dropped the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grounds of appeal and dealt with the 1<sup>st</sup> to the 4<sup>th</sup> grounds of appeal.

In the 1<sup>st</sup> ground of appeal, the appellants said the issue of jurisdiction can be raised at any stage including at the appellate level. They said the respondent failed to produce valuation report of the suit property at the Tribunal and as proof of pecuniary jurisdiction of the suit property. That even the Tribunal did not invite parties to address the issue of jurisdiction. They said the Tribunal assumed jurisdiction in trying the application and they relied on the case of **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda & 2 Others [1995] TLR 155.**

On the 2<sup>nd</sup> ground, the appellants said that the impugned decision does not contain opinion of assessors. They submitted that the Chairman failed to record opinion of assessors in the proceedings and judgment as required by section 23 (1) of the Land Disputes Courts (District Land and Housing Tribunal) Act Cap 216 RE 2019 read together with Regulation 19(1)(2) of the Land Disputes Courts (the

District Land and Housing Tribunal), GN No. 174 of 2003 (the **Regulations**). They also cited the case of **Mazigo Biseko vs. Wegoro Timbira (Administrator of thr Estate of the late Timbira Mbatu Matete (HC-Musoma)**(unreported) where it was stated that a valid judgment has to emanate from valid proceedings in which both components of the Tribunal that is a chairperson and assessors participated. They also cited the case of **Edina Adam Kibona vs. Absolom Swebe, Civil Appeal No. 286/2017 (CAT-Mbeya)** (unreported).

Submitting on the 3<sup>rd</sup> ground of appeal, the appellants said that the Chairman failed record and to read the opinion of assessors before the parties prior to the delivery of the judgment. They said the records show that the defence case was closed on 20/02/2020 and on the same date the Tribunal ordered assessors to record their opinion and then proceed to set the date of judgment on 27/02/2021. The records do not show when the opinion of the assessors was read out to the parties. They concluded that this was contrary to Regulation 19 (1), (2) of the Regulations.

On the 4<sup>th</sup> ground of appeal, appellants said that the records shows that the Chairperson disagreed with the opinion of one of assessors one Kihula but did not give reasons for such departure. They said this contrary to section 24 of the Land Disputes Court Act. The appellants relied on the case of **Dorothy Mathew Kakamba vs. Tabora Municipal Council, Land Appeal No.36 of 2018 (HC-Tabora)** (unreported). They prayed for the appeal to be allowed with costs.

In reply the respondent said that the appellants have preferred Memorandum of Appeal instead of Petition of Appeal contrary to the law. The respondent said that pecuniary jurisdiction of the District Tribunal according to section 33 (2) (a) and (b) of the Land District Courts Act as amended is to the extent that it should not exceed TZS 300,000,000/=. The estimated value of the suit property according to the respondent was TZS 4,000,000/=, therefore the District Tribunal had jurisdiction to try the matter.

The respondent consolidated the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal and argued them together. She said these are procedural irregularities and they do not touch the merits of the dispute itself.

She said even if determined by this court the said grounds would not establish the parties' rights. The respondent relied on section 45 of Land District Courts Act which she said prohibits alteration of the decision of the Ward or District Tribunals on account of any error or omission or irregularity in the proceedings before and after hearing. The respondent said the Chairperson had the hand written opinion of assessors and read them out during the deliverance of the judgement. She said the Chairman disregarded the opinion of assessors as there was no evidence supporting appellant to be owners of the suit premises. That the suit property have been owned by the applicant's /respondent family since 1970, that is more than 50 years. That appellants trespassed in 2018. She insisted that respondent adversely owns the suit property against appellants. She prayed for the appeal to be dismissed without costs.

In rejoinder the appellants reiterated their main submission and added that this appeal originated from the District Tribunal and not Ward Tribunal as the respondent was trying to suggest. The appellants submitted that they were questioning the pecuniary jurisdiction of the District Tribunal and not Ward Tribunal.

The main point for determination is whether this appeal has merit.

The grounds of appeal raised by the appellant can be grouped in to two grounds, namely, (i) whether the Tribunal had jurisdiction to entertain the matter, and (ii) whether the procedural requirement regarding opinion of assessors was complied with.

Starting with the first issue, the records in the proceedings of the Tribunal reveal at page 3 that the applicant who is the respondent herein testified that there was a case in the Village Land Council and at the Ward Tribunal. However, she said that they were ordered to file fresh suit at the District Tribunal. Now, the appellants allege that the District Tribunal lacks pecuniary jurisdiction. However, the respondent herein who was the applicant at the District Tribunal, estimated the value of the suit property to be TZS 4,000,000/=, this amount is within the pecuniary jurisdiction of the District Tribunal because according to section 33 (2) (a) of Land District Courts Act the pecuniary jurisdiction should not exceed TZS 300,000,000/=; and according to the section 10 of the Ward Tribunal Act, 1985 as amended the pecuniary jurisdiction of Ward Tribunals should not exceed TZS 3,000,000/=. It is apparent therefore that the suit

property estimated at TZS 4,000,000/= is within the pecuniary jurisdiction of the District Court.

In any case, I find this ground to be an afterthought because if at all there was seriousness on the part of the appellants, they would have raised a preliminary objection at the District Tribunal. And since there was no such objection, then it is presumed that the appellants conceded to the jurisdiction of the District Tribunal. The appellants have alleged that jurisdiction can be raised at any stage of the proceedings, indeed this is the position, however, jurisdiction being the basic condition for institution of any cause it is supposed to be taken care of at the earliest possible time considering that the Ward Tribunal struck out the initial application for want of jurisdiction to entertain it. This ground therefore has no merit.

On the issue of the of the opinion of the assessors, the appellants' claim is that the Chairperson did not follow the required procedures, that is, the opinion of the assessors was not recorded, and read over to the parties before judgment and that the Chairperson did not state the reasons as to why he departed from the opinion of one of the assessors. The proceedings of the District Tribunal shows that the



assessors were Katundu and Kihula and their handwritten opinions are in the file of the District Tribunal though it is not reflected as such in the proceedings. Consequently, the Chairperson did not state why he differed with the findings of Mr. Kihula. In fact, that was the irregularity on the part of the Chairperson. However, in my considered view, this has not occasioned any injustice to the parties. Section 45 of the District Land Tribunal states:

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."*

It is my humble view that the procedural irregularity should not be applied to deprive the respondent of her right of ownership over the suit property as the evidence on ownership of the suit property at the District Tribunal has not been controverted. In fact, the evidence is clearly in favour of the respondent. In that respect the provision cited above which asserts the application of substantive justice must come into play. I am aware of the cases cited by the appellants on assessors, but each case has its own merits and is decided according

to its own circumstances. Subsequently, failure to read assessors opinion to the parties and reflect the same in the proceedings, and failure to state the reasons for departing from the finding of one of the assessors has not in any way occasioned injustice to the appellants. In the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph, Civil Appeal No.55 Of 2017 (CAT-Mwanza)** (unreported) where the Court of Appeal when invoking the principle of overriding objective held that, courts should deal with cases justly and have regard to substantive justice. In a similar vein, I invoke the principle of overriding objective to do away with the procedural irregularities on the issues of the assessors as explained hereinabove.

In the result, the appeal is dismissed for want of merit. Each party to bear own costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**15/12/2021**

