

**IN THE HIGH COURT OF TANZANIA
(LAND ENVISION)
AT DAR ES SALAAM
LAND APPEAL NO. 258 OF 2021**

*(From the decision of the District Land and Housing Tribunal for Kinondoni
at Mwananyamala before Hon. Mwakibuja (Chairperson) in Land
Application No. 407 of 2014)*

IDDI MNYAU APPELLANT

VERSUS

EDWARD MUGWE MUGENDI 1ST RESPONDENT
AMANI MUGWE MUGENDI 2ND RESPONDENT
ROBERT MUGWE MUGENDI 3RD RESPONDENT
KANALI ISMAIL MUGWE 4TH RESPONDENT
JACOB ISMAIL MUGWE 5TH RESPONDENT

JUDGMENT

Date of the last Order: 09.08.2022

Date of Judgment: 16.08.2022

A.Z.MGEYEKWA, J

The appellant appealed to this court following her dissatisfaction with the decision of the District Land and Housing Tribunal for Kinondoni at

Mwananyamala in Land Application No.407 of 2014 which was decided in favor of the respondent. A brief background of the case relevant to this appeal is that the appellant filed the application in the District Land and Housing Tribunal for Kinondoni at Mwananyamala, in Application No. 407 of 2014, the application ended in favor of the respondents. Aggrieved, the appellant lodged an amended Memorandum of Appeal and raised five grounds of appeal as follows:-

1. *That the Chairman erred in law and in fact by holding that the respondents with letter of offer titled **D/ KN/ A/ 32772/ 1/ DDM** in respect of piece of land plot **No. 834 Block C Mbezi Beach Kinondoni Municipality** are the rightful owner of a piece of land **Plot 840/841 Block C Mbezi Beach Kinondoni**.*
2. *That, the Chairman erred in law and in fact by failing to evaluate and analyse the evidence adduced before her.*
3. *That, the Chairman erred in law and in fact by holding that the disputed **Plot 840/841 Block C, Mbezi Beach, Kinondoni Municipality** was double located Land.*
4. *That, the Chairman erred in law and fact by not visiting the disputed piece of Land if at all she was of the view that the*

disputed Land Plot 840 / 841 is the same as Plot 834, Block C Mbezi Beach Kinondoni Municipal.

5. *That, the Chairman erred in law and in fact by holding that the letters of offer between the parties issued by the Kinondoni Municipality are ambiguous and the appellant's letter of offer is not genuine.*

When the matter was called for hearing on 20th July, 2022, the appellant had the legal service of Mr. Richard Kinawali, learned Advocate, the 1st respondent appeared in person while the 2nd 3rd, and 4th respondents were absent.

On the parties' concurrence, the hearing of the matter was through written submissions the filing of which followed the schedule drawn by the Court.

The learned counsel for the appellant was the first to kick the ball rolling. Arguing for the first ground, Mr. Richard contended that the appellant filed an Application No. 407 of 2014 before Kinondoni District Land and Housing claiming ownership of plot No. 840/841 and that the documentary evidence tendered during the trial to prove his ownership was an application letter (Exh.P1), a Letter of Offer dated 11.07.1991 (Exh.P2), Exchequer Receipt dated 16.07.1991 (Exh.P3) and a letter

from Kinondoni Municipal dated 19.06.2013 (Exh.P4) to substantiate his claims that he is the lawful owner of the suit property in Plot No. 840/841 Block C, Mbezi Beach Kinondoni. The learned counsel for the appellant contended that the 3rd Defendant in his testimony tendered only a Letter of Offer (Exh. D1) and the same related to Plot No. 834 which was not related to the suit land. Mr. Richard stressed that the Defendant did not prove his ownership of Plot 840/841. To support his submission, he cited section 110 of the Evidence Act Cap. 6 [R.E. 2019].

On the second ground, the learned counsel for the appellant lamented that the tribunal failed to evaluate and analyse the evidence on record. The learned counsel contended that the Chairman failed to evaluate and analyse the evidence since the respondent documentary evidence, however, they failed to show any connection between Plot No. 834 and the suit land Plot No. 840/841.

As to the third ground, the learned counsel for the appellant contended that the trial Chairperson failed to determine the issue of double allocation. He argued that during trial DW1 tendered a Letter of Offer No. D/KN/A/32772/1/DDM in respect of Plot No. 834 while the appellant in support of his ownership tendered a Letter of Offer No. D/KN/A/323773/1/DDM in respect of Plot No. 840/841 which was

admitted as Exhibit P2. Thus, it was his view that the fact proves two distinct Plots with different two Letters of Offer that is Plot No. 834 and the disputed plot No. 840/841.

Submitting on the fourth ground, Counsel for the applicant contended that the Chairman was required *suo motu* ordered *locus in quo* to clear out the doubts. Cementing on the same he cited the case of **Kimonidimitri Manthelis vs Ally Azim Dewji & 17**, Civil Appeal No. 4 of 2018, the Court held that:-

'the essence of visit on locus in quo in land matters is to enable the court to see objects and places referred in evidence physically and to clear doubts arising from conflicting evidence in any about physical objects

The learned counsel continued to argue that the fact that the Chairman did not visit *locus in quo* then it was not easy to determine if there was double allocation because there was no any evidence tendered at the tribunal indicating that Plot No. 834 and Plot No. 840/841 were the same.

On the strength of the above submission, he urged this court to quash and set aside the decision of the tribunal and allow the appeal with

In reply, on the 1st ground Mr. Paul contended that the appellant is claiming that he is the owner of Plot No. 840/841 which in his record, he alleged that the two plots have an Offer with reference No. D/KN/A/32772/1/DDM issued on 13th July, 1991. He submitted that the respondents produced an Offer with reference No. D/KN/ A/ 32772 /1 / DDM referring to Plot 834 issued on 20th December, 1990. Mr. Paul added that the respondent at the trial tribunal testified to the effect that the Kinondoni Municipal Council allocated him the said suit plot. He added the appellant on his side was required to call a witness from Kinondoni Municipal Council to testify and identify the plot in dispute, however, the appellant did not call any witnesses to support his claims.

On the second and third grounds, the respondent's counsel contended that they own Plot No. 834 and that they are not aware of Plot 840/841 referred by the appellants in this case as that it was the appellant's duty to prove that the respondents owned plot No. 840/841. The learned counsel for the respondents further, contended that the trial tribunal Chairman correctly analysed the evidence and came up with the correct evaluation that, the appellant referred to the same plot which was issued the different reference in 1991.

On the fourth ground, the counsel for the respondents submitted that

not in all cases the court is required to visit the *locus in quo*, it depends on case and demand of the parties, the demand of the court itself, and the circumstances of the case. Therefore, it was his view that the Chairman did not see the relevance of visiting the *locus in quo* as the facts are sufficient.

On the strength of the above, they beckoned upon this court to dismiss the appeal.

In his rejoinder, the appellant reiterated his submission in chief. He added that the failure of the appellant to call a witness from Kinondoni Municipality does not grant ownership of the disputed land to the respondent. He went on to argue that the appellant discharged proved his ownership of the suit property, however, the Chairperson wrongly declared the respondent owners of the suit land without any evidence.

I have revisited the evidence and submissions of both sides now. Before I start to determine the grounds of appeal, I called upon the parties to address the court on the point of law that the assessors' opinions were not recorded and the same were not read over to the parties. The learned counsel for the appellant submitted that the assessors' opinions are not reflected in the judgment. The learned counsel for the respondent simply submitted that the assessors'

observations are reflected in the judgment. The records reveal that the Chairman on 27th July, 2021, the Chairman stated that the hearing will proceed without assessors because their term of service came to an end. Astonishing on 25th September, 2021, the Chairman informed the parties that the assessors were yet to give their opinions then judgment was set on 1st October, 2021, and the same was delivered on that date without recording and reading the assessors' opinion.

In addressing the point of law, whether the assessors' opinions were reflected in the tribunal proceedings. I am guided by the Court of Appeal of Tanzania authorities, in the case of **Mohsin v Taningra Contractor** Land Appeal No. 133 of 2009, where the Chairman did not indicate the assessors' opinions in his judgment as the result of the Court of Appeal of Tanzania declared the judgment was null and void. 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”.

Equally, the Court of Appeal of Tanzania in the case of **Ameir Mbaraka and Another 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 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 after 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 does not show the opinion of the assessors in writing.

The reason stated by the Chairman in his Judgment that the assessors were retired does not make sense. I fail to understand why the assessors' opinions were not filed and read in front of the parties.

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 an appeal. I shall not consider the remaining grounds of appeal as the same shall be an academic exercise after the findings I have made herein.

section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceeds to revise the proceedings of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No.407 of 2014 in the following manner:-

- (i) The Judgment, Decree, and the proceedings from 25th September, 2021 of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 407 of 2014 are quashed.

- (ii) I remit the case file to the District Land and Housing Tribunal for Kinondoni at Mwananyamala before another Chairperson to finalize the proceedings and compose a new Judgment.
- (iii) I direct, the case scheduling be given priority, the hearing to end within six months from the date of Judgment.
- (iv) No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 16th August, 2022



A.Z.MGEYEKWA

JUDGE

16.08.2022

Judgment delivered on 16th August, 2022 via video conferencing whereas both counsels were remotely present.



A.Z.MGEYEKWA

JUDGE

16.08.2022

Right of Appeal fully explained.