

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 13 OF 2021

*(Arising from the decision of Land District Land and Housing Tribunal for
Mkuranga, In the Land Application No. 13 of 2015, delivered by Hon.
Mwakibuja C.P. dated on 10th December, 2020)*

MGANZA MAKUNGU (The Administrator of the late

Mkungu Swalehe Zilala) **APPELLANT**

VERSUS

JAMILA YAHAYA **1ST RESPONDENT**

MAHAMUD MBWANA MGOMI **2ND RESPONDENT**

JUDGMENT

Date of Last order: 12.08.2022

Date of Judgment: 18.08.2022

A.Z.MGEYEKWA, J

This is the first appeal. At the centre of controversy between the parties to this appeal is a parcel of land located at Mkuranga within the Coast region. The decision from which this appeal is the judgment of the district land and Housing Tribunal in Application No. 13 of 2015. The material

background facts of the dispute are not difficult to comprehend. They go thus: At the DLHT the appellant said that he was the administrator of the estate of his late father who passed away in 1998, he further stated that the land was acquired by his father in 1940. the 1st respondent claimed that she was the lawful owner of the land in dispute for more than 20 years.

The Appellant had decided to lodge a case at the District Land and Housing Tribunal for Mkuranga for declaration orders that he is the lawful owner of the suit land, and that the 1st respondent was just a trespasser to the suit land. The District Land and Housing Tribunal for Mkuranga determined the matter and found that the respondent is the lawful owner of the suit land, hence the Appellant had nothing to claim since the suit land belonged to the respondent.

Believing the decision of the District Land and Housing Tribunal for Kibaha was not correct, the appellant lodged a petition of appeal containing five grounds of appeal as follows: -

1. *That, the Tribunal's Chairperson erred in law and in fact, by deciding that the disputed property belong to the respondent while the evidence adduced by the appellant was sufficient enough to determine ownership of the disputed land.*

2. *That, the Trial tribunal erred in law and in fact by failure to evaluate judiciously the evidence presented before it, and wrongly concluded the disputed land belonged to the respondent without any cogent proof as to warrant ownership of the disputed land.*
3. *That the tribunal's Chairperson erred in law and in fact by delivering the decision without hearing and considering the opinion of the assessors on her faulted decision.*
4. *That the Tribunal's Chairperson erroneously made a finding in law and in fact by declaring the respondent as the owner of the disputed land based on contradictory evidence adduced by the respondent.*
5. *That the faulted decision of the trial tribunal was tainted with contradictory facts and insufficient evaluation of the evidence presented by parties and their witness thereof.*

When the matter was called for hearing before this court on 12th August, 2022, the hearing proceeded through video conferencing whereas the appellant was represented by Mr. Hamidu, learned Advocate while the 1st respondent was represented by Ms. Josephine Mtabirwa, learned Advocate. Hearing of the appeal took the form of oral.

The appellant in his written submission started with a brief background of the facts which led to the instant appeal which I am not going to reproduce

in this appeal. The appellant opted to combine the 1st and 2nd grounds and argue them together. He argued the 3rd, 4th, and 5th grounds separately.

On his first ground, the learned counsel started to narrate the genesis of the saga which I am not going to reproduce. He complained that the trial Chairman determined the matter without proper evaluation of the evidence tendered by the appellant before the District Land and Housing Tribunal including the Valuation Report, (Exh. P2) hence that the holding was not correct for not considering the evidence of the appellant.

Arguing on the third ground, Mr. Hamidu contended that the District Land and Housing Tribunal failed to consider the opinion of the assessors while it was a mandatory requirement as per The Land Disputes Court (The District Land and Housing Tribunal), Regulations, 2003. He contended that the assessors were required to write their opinions and the same was to be reflected in the tribunal's records, but the same is not reflected in the tribunal's file. Fortifying his submission he cited the case of **Edina Adam Kibona v Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017. He insisted that the Chairman was required to mention the opinion of assessors and the same must be part of the tribunal records, contrary to that the decision of the tribunal is fatal.

Submitting on the fourth, ground, Mr. Hamidu contended that the respondent's evidence was contradictory. He claimed that the respondent in his testimony said that his father acquired the suit property at the suit land was a forest. He submitted that there is no evidence of whether the District Council ordered the division of the suit plots. Failure of this is proof that the respondent was the trespasser of the appellant's land. He valiantly argued that the respondent's claims that the Village Government allocated him the suit land is not supported by any documentary evidence. He insisted that the suit land was originally owned by the appellant's father, and that knowing or not knowing the neighbours was not a good ground to disown the appellant from the suit land.

Submitting on the fifth ground of appeal the appellant contended that the DLHT had failed to analyses the evidence before it in determining the application before the DLHT because the Valuation Report showing drawings was prepared by an authorized person.

On the strength of the above submission, Mr. Hamidu submitted that the appellant and DW2 evidence were sufficient to prove ownership of the suit land.

In response, Ms. Josephine, learned advocate opted to combine the 3rd, 4th and 5th grounds of appeal. She stated that the Valuation Report was not proof of ownership of the disputed property. She stated that the

appellant did not adduce any evidence to prove ownership over the suit property. Ending, she urged this court to dismiss the appeal.

In rejoinder, the appellant's counsel reiterated his submission in chief.

Having summarized the submissions and arguments by both learned counsels, I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the first, second, fourth, and fifth grounds of appeal because they are intertwined. Except for the third ground which will be determined separately in the order as it appears.

I have opted to start with the third ground of appeal, it appears that the Tribunal assessors participated in hearing the Application No. 13 of 2015 and their names appear as Mohammed Katundu and Kihulla M.D. whereas both gave their independent opinion on 21st October, 2020, and the same are reflected in the tribunal's file. However, the proceeding of the District Land and Housing Tribunal shows that the Défense case was closed on 13th March, 2020. Thereafter, the proceedings do not show whether the assessors appeared at the tribunal. It appears therefore that the assessor's opinion was not read, in the presence of the parties. The record shows that the assessors wrote their opinion on 21st October, 2020, and the judgment was delivered on 10th December, 2020 without stating whether the assessor's opinion was read in the presence of the parties. The Court of Appeal of Tanzania 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 to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict.**'*
[Emphasis added].

Inspired by the incisive decisions quoted above, applying the same in the instant appeal, it is evident a fundamental irregularity was committed by the tribunal Chairman. Thus, there is no proper judgment before this Court for it to entertain an appeal.

Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 [R.E 2019] which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing Tribunal for Mkuranga in Land Application No.13 of 2015 in the following manner: -

- (i) The Judgment, Decree, and Proceedings from 17th November, 2020 of the District Land and Housing Tribunal in Land Application No. 8 of 2015 are quashed.
- (ii) I remit the case file to the District Land and Housing Tribunal for Mkuranga for retrial before another Chairman in accordance with the law.
- (iii) I direct, the case scheduling be given priority, hearing to end within six months from the date of Judgment.
- (iv) Appeal is allowed without costs.

Order accordingly.

 **A.Z.MGEYEKWA**
JUDGE
18.08.2022

Judgment delivered on 18th August, 2022 via video conferencing whereas both counsels were remotely present.

 **A.Z.MGEYEKWA**
JUDGE
18.08.2022