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

MISC. LAND APPEAL NO. 01 OF 2022

(Arising from Mkuranga District Land & Housing Tribunal in Land Appeal No. 09 of 2021; Originating from Mwandege Ward Tribunal in Land Application No. 02 of 2021)

AYOUB RAMADHANI MABUBA..... APPELLANT

VERSUS

SAID OMARY MOHAMED.....RESPONDENT

Date of Last Order: 15.08.2022
Date of Judgment: 02.09.2022

JUDGMENT

V.L. MAKANI, J.

This is a second appeal. The appellant **AYOUB RAMADHANI MABUBA** lost at Mwandege Ward Tribunal (the **Ward Tribunal**) in Land Application No. 02 of 2021. He appealed and again lost at the Mkuranga District Land and Housing Tribunal (the **District Tribunal**) in Land Appeal No. 09 0f 2021 (Hon. Mwakibuja Chairperson).

Being dissatisfied with the decision of the District Tribunal the appellant has filed this appeal with four grounds of appeal as follows:

1. *That the honourable appellate tribunal erred in law for upholding the decision of the ward tribunal without taking into consideration that the same lacks jurisdiction.*

2. *That the honourable appellate tribunal erred in law to decide that the ward tribunal has sufficient coram.*

3. *That the honourable appellate tribunal erred in law for not taking visit to locus in quo.*

4. *That the honourable appellate tribunal erred in law for not determining grounds of appeal no. 4, 5, 6 and 7.*

The appellant has prayed for the appeal to be allowed with costs and the decision of the District Tribunal be quashed and set aside.

With leave of the court the appeal was argued by way of written submissions drawn and filed personally by the parties herein.

In his submission, the appellant started by giving a brief background of the dispute. As for the first ground he said the pecuniary jurisdiction of the Ward Tribunal relates to a property whose value does not exceed 3 million as per section 11 of the Land Disputes Courts Act, Cap 216 RE 2019. He said the appellant purchased the suit land in 2010 for TZS 2,000,000/= and that it is now 11 years since the purchase and he has built a house of 3 rooms with fence which is estimated to be more than 50 Million. He said the Tribunal visited the suit land and saw the situation but still determined the matter in favour of the respondent.

On the second ground the appellant said section 4 (1) (a) of Land Disputes Courts Act provides for the Ward Tribunal to sit with not less than eight members and that section 11 of the Land Disputes Courts Act provides the composition of the Ward Tribunal that it shall consist of not less than four nor more than eight members of whom three shall be women. He said the coram of the Ward Tribunal was not proper because the coram was four members with only one woman, and the District Tribunal did not decide on this issue.

As for the third ground the appellant said the dispute is based on boundaries where the appellant is complaining that the respondent has trespassed by two feet at the top of the north-west corner of appellant's land. He said the District Tribunal did not visit *the locus in quo* to see the wrong diagram that was drawn by the Ward Tribunal.

Lastly the appellant said that the District Tribunal did not determine the 4th, 5th, 6th and 7th grounds of appeal. He said it is against Order XXXIX Rule 31 (a), (b) and (c) of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**) which mandatorily states that judgment on appeal has to be in writing, state the points for determination the decision

thereto, and the reasons for the decision. That the District Tribunal did not consider the points for determination which is contrary to the law. It did not as well adduce reasons for the decision. He prayed for the appeal to be allowed with costs.

In reply, the respondent said that the argument by the appellant that the value of the suit land is 50 Million is an assumption and not specific. That the dispute is only on the boundary which the Ward Tribunal has jurisdiction to entertain. He said that visiting *locus in quo* and drawings of the Ward Tribunal was relevant as the Ward Tribunal used the parties' document which showed the actual size of each plot and boundaries.

On the second ground he said the Ward Tribunal was properly constituted as there were four members including the Chairman and Secretary of the Tribunal making the total of five members who signed the judgment. He insisted that the Ward Tribunal was properly constituted.

On the third ground the respondent submitted that visiting *locus in quo* is not mandatory but done only when the court considers it

necessary. That the court/tribunal only deals with the existing pleadings and the evidence adduced in the trial Tribunal. He relied in the case of **Nizar M.H Ladak vs Gulamali Fazal Jonmohamed (1990) TLR 29.** He said that it becomes necessary for a site visit when the pleadings and the evidence adduced leaves some issues unsolved which the tribunal needs to satisfy itself by observation and verification at the plot.

He submitted on the fourth ground that it is the duty of the party to prove his case and not the tribunal. He said the appellant was given a chance to argue his case at the Ward Tribunal but did not argue the alleged 4th, 5th, 6th and 7th grounds of appeal. He said the appellant went against section 110 of the Evidence Act CAP 6 RE 2019 (the **Evidence Act**) which requires that the one who alleges must prove and consequently the respondent's evidence overweighed that of the appellant. He said at page 3 of the judgment that the appellant was accorded the right to argue his appeal. He said that the District Tribunal properly composed its judgment contrary to appellant's allegations. He prayed for the appeal to be dismissed with costs.

In rejoinder, the appellant reiterated his main submissions and added that the 4th ,5th, 6th and 7th grounds were not attended by the District Tribunal. He said that it was necessary for the District Tribunal to visit the site as the Ward Tribunal drew a wrong diagram which resulted to a wrong decision. He said that the seller did not testify at the Ward Tribunal and therefore site visit was important.

I have gone through the submissions by the parties herein and the records of the Tribunals below. The main issue for consideration is whether the appeal at hand has merit.

It is clear from the records that the Chairman of the District Tribunal did not attempt to discuss the grounds raised by the appellant at the District Tribunal. The appellant raised seven grounds of appeal, but the Chairman reproduced the said grounds, recorded the submissions by the appellant and the reply thereto. He then referred to the findings of the Tribunal as partly quoted below:

> *"Waungwana Wazee wa baraza hili walitoa maoni yao kwamba rufaa itupiliwe mbali kwani eneo ni mali halali ya mrufaniwa.*
>
> *Naungana na maoni ya wazee wa baraza pamoja na uwamuzi wa baraza la kata. Mrufani aendelee kuheshimu mipaka na ukubwa wa eneo lake pasipo kuvuka mipaka.*

Alama ambayo hata baraza la kata liliikuta mpakani iendelee kuheshimika na pande zote mbili. Uwamuzi wa baraza la Kata uendelee kuheshimika kwani shauri lilisikilizwa na idadi kamili iliyohitajika kisheria na ushahidi ulizingatiwa., sababu za rufaa zote zimetupiliwa mbali. Rufaa imetupiliwa mbali bila gharama kwa kuzingatia wadaawa ni majirani"

What the learned Chairman did as said, was record the submission by both parties, join hands with the Ward Tribunal's decision and simply stated that the Ward Tribunal was properly constituted. There is no point for determination, analysis of the issues nor reasons for the decision reached. This is contrary to Regulation 20(1) of the District Land Housing Tribunal Regulations, 2003 which states that the judgment of the Tribunal must be short, written in simple language and consists of: (a) a brief statement of facts, (b) findings on the issues, (c) a decision, and (d) reasons for the decision. This Regulation is similar to Order XX Rule 4 and 5 of the CPC which states that a judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

The above provision was applied by Hon. Kakolaki, J. In the case of **Baghayo A. Saqwere vs Salaaman Health Services & Another, Civil Appeal No. 24 of 2022 (HC-DSM)** (unreported) where he

cited with approval the case of **Yusuph Abdallah Ally vs DPP, Criminal Appeal No.300 of 2009 (CAT)** (unreported). In the cited case of **Yusuph Abdallah Ally** (supra) it was emphasized that a judgment should contain inter alia, the point or points for determination, the decision thereto and the reasons for the decision. The basis behind this is, in my view, to enable parties in the matter to know how the court reached its decision *vis a viz* the evidence that was presented and admitted and the final directions or verdict.

As regards the matter at hand, it is obvious that the judgment of the District Tribunal was defective for want of points for determination and reasons for the decision. The Chairman did not deliberate on the grounds raised, save for the second ground concerning the quorum of which he did not even give reasons for his decision. The judgment was thus incompetent as it did not adhere to the law, that is Regulation 20 of the Land Disputes Courts Regulations and Order XX Rule 4 and 5 of the CPC.

On that basis I proceed to allow this appeal for the reasons stated above. The judgment of the District Tribunal is thus nullified, quashed, and set aside. The file is remitted back to the District

Tribunal for proper composition of the judgment before another Chairman. This being an irregularity by the District Tribunal, there shall be no order as to costs.

It is so ordered.

V.L. MAKANI
JUDGE
02/09/2022