

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

**LAND APPEAL NO. 292 OF 2021**

(Originating from the Judgment and Decree in Land Application No. 157 of 2017 at District Land Housing Tribunal for Kinondoni at Mwananyamala delivered on 18<sup>th</sup> November 2021 Hon. Jerome Mjanja, Chairman)

**EMMANUEL A. MAJEBELE (Administrator of the estate of the late of the Estate late Ester KABENO KARUME ..... APPELLANT**

**VERSUS**

**ANTONY FRANCIS SAPILA .....1<sup>ST</sup> RESPONDENT**  
**TUMAINI ABRAHAM MWANGA.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

*Date of last Order:04/10/2022*  
*Date of Ruling:05/10/2022*

**K. D. MHINA, J.**

This is the first appeal. It originated from the District Land and Housing Tribunal (the DLHT) for Kinondoni, where the Appellant, Emmanuel A. Majebele (Administrator of the Estate of the late Ester Kabelo Karume), sued the Respondents for trespassing the land located at Msewe Golani within Kinondoni District (disputed land).

He prayed for the following reliefs: -

- i. A declaration that the applicant is a lawful custodian of the disputed land;
- ii. Respondent to pay the Applicant general damages of Tshs. 20,000,000/= for disturbances and failure to use the land;
- iii. Respondent be ordered to give vacant possession of the suit land.
- iv. Costs of the Application.

In their written statement of defence, the respondents strongly disputed the claims. They alleged that they lawfully purchased the owners' land in dispute from the late Shija Mpondaguzi.

In its decision dated 18<sup>th</sup> November 2021, the Tribunal dismissed the Appellant's claim and declared the Respondents as the lawful owners of the suit land.

In discontent, the appellant lodged this appeal with six grounds of appeal.

When the Appeal was called on for hearing, Ms. Hawa Nyanzi, learned advocate appeared for the applicant. The respondents appeared in person, unrepresented.

Before the hearing commenced, I wanted to satisfy myself on the propriety or otherwise of the record of proceedings before the trial Tribunal.

This is because the record of the proceeding before the Tribunal (Handwriting) indicates that on some dates when the matter proceeded for hearing, the Chairman sat with two assessors, while on other dates, he sat with one or in the absence of assessors. Therefore, the attendance was characterized by inconsistencies.

Therefore, "*suo mottu*," I invited the parties to address that pertinent issue.

When addressing the Court, Ms. Nanyanzi conceded the anomaly. She submitted that the law under Section 23(1) and (2) of the LDCA requires the Chairman of the Tribunal to sit with not less than two assessors who shall give their opinion before the Judgment.

She further argued that; Regulation 19(1) and (2) of G.N 174 of 2003 also provides the same requirement of assessors and their duty to give opinions.

Furthermore, she said in the appeal before this Court that the records indicate that the assessors were not present on the date when the opinion was given. Also, on the date when the defence hearing commenced, the assessors were absent.

On the way forward, she cited **Elilumba Elezel vs. John Jaja, Civil Appeal No. 30 of 2020 (Tanzlii)**, at page 13, where the Court of Appeal, in a similar circumstance, ordered the re-trial. Therefore, she prayed that the proceedings of the DHLT for Kinondoni be quashed and a retrial be ordered.

On their part, the first respondent submitted that the assessors attended on three occasions when witnesses testified. On other events, they did not attend.

The second respondent submitted that the assessors were present when the respondents and appellant testified. Always there were two or one assessor in attendance. But the trial was never heard without the attendance of assessors.

In her brief rejoinder, Ms. Nanyanzi submitted that the Respondents conceded that only one assessor was in attendance on other occasions, which was against the Law.

In determining the appeal at hand, the law is settled that the composition of the Tribunals, it the Chairman who shall sit with not less than two assessors who shall be bound to give their opinion before the Judgment.

This is provided under Section 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 R. E. 2019, which provided:-

- i. The District Land and Housing Tribunal establishes under Section 22 shall be composed of one chairman and not less than two assessors.*
- ii. The District and Land Housing Tribunal shall dully constitute when held by a chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the Judgment."*

In the Appeal at hand, the record of the trial tribunal reveals that, when the trial commenced on 4<sup>th</sup> April 2019, there were two assessors; on 24<sup>th</sup> July 2019, when PW1 and PW2 testified, only one assessor was present.

On 5<sup>th</sup> January 2021, when the defence hearing commenced and subsequence dates, i.e., on 27<sup>th</sup> April 2021 and 29<sup>th</sup> September 2021, when the defence case was closed, neither of the two assessors was present.

On 11<sup>th</sup> November 2021, it indicated on the record that the tribunal read the assessors' opinion, but the record does reveal that the assessors were present.

Therefore, it is clear from the record that there were inconsistencies in how the Chairman sat with assessors.

Section 23(3) of the LCDA provides a "leeway" in case one or both assessors cannot proceed with the trial. That the Chairman can proceed, but he should record the reason for the inability of the assessor(s) to proceed to qualify him to invoke Section 23 (3) of the LCDA.

In the present appeal, the Chairman did not record why he sat with one assessor on some occasions or in the absence of both assessors. Therefore, there was unclear involvement of assessors at the trial.

The Court of Appeal in **B. R. Shindika t/a Stella Secondary School Vs. Kihonda Pitsa Makaroni Industries Ltd**, Civil Appeal No. 128 of 2017 (Tanzlii), at page 12, when discussing the position similar to section 23(1) (2) of the LDCA, observed that:-

*"Furthermore, once a trial commences with a certain set of assessors, no changes are allowed or even abandonment of those who were in the conduct of eth trial."*

The Court further stated that:

*"The consequence of unclear involvement of assessors in trial renders such a trial a nullity."*

Being guided by the above provision of law and case law, I find that the proceedings of the trial tribunal was not properly conducted and the

failure of the Chairman to sit with assessors as per the requisite of the law renders the proceedings nullity.

Consequently, I invoke the provisions of Section 43(1) (b) of the Land Disputes Court Act, Cap. 216, which vests revisional powers to this Court and proceeds to revise the proceedings of the District Land and Housing Tribunal in the following manner: -

- i. The proceedings of the District and Housing Land Tribunal for Kinondoni at Mwananyamala in Land Application No. 156 of 2017 are quashed, and the Judgment and decree are set aside.
- ii. The case file be remitted to the District Law and Housing Tribunal for Kinondoni at Mwananyamala to be heard de-novo before another Chairman and a new set of assessors.
- iii. Since the matter was raised "*suo motu*", I make no order as to costs.

It is so ordered.



  
**K. D. MHINA**  
**JUDGE**  
**05/10/2022**