IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL N0. 233 40 OF 2021

(From the Judgment and Decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 196 of 2018 delivered by Hon. C.P R.Mwakibuja dated on 08th October, 2021)

JAMES NGELEJA (*under power of attorney issued by Mary Agne Mpelumbe the administrator of Dr. Isaya Simon Mpelumbe***.....APPELLANT**

VERSUS

AGNES MHANDO .....1ST RESPONDENT

AHMAD SALEH MLILIMA ..... 2ND RESPONDENT

AISHA MUSSAH MFAUME ..... 3RD RESPONDENT

ALLY RAJAB MASIKI ..... 4TH RESPONDENT

ANDREW MESHACK MAKANGE ..... 5TH RESPONDENT

ASUMAN ENDRU KIPINDU ..... 6TH RESPONDENT

ATHUMAN MLEMETA ..... 7TH RESPONDENT

BEATRICE BENEDICTO ISHENGOMA ..... 8TH RESPONDENT

BERED FANUEL NTABALIBA ..... 9TH RESPONDENT

BOLLEN THOMAS LINUS ..... 10 TH RESPONDENT

BRIGITA PAUL ..... 11TH RESPONDENT

DAVID PATRICE SIUGUNGU ..... 12ND RESPONDENT

DEVOTHA M. PAULINI ..... 13TH RESPONDENT

DEVOTHA G. KOMBA ..... 14TH RESPONDENT

DIGWA MATIAS ..... 15TH RESPONDENT

ESTHER LAZARO GASOGOTA ..... 16TH RESPONDENT

ESTA DAMAS ..... 17TH RESPONDENT

FATUMA OAMRY MWINYI ..... 18TH RESPONDENT

FRANK RUBENI MSOPHE ..... 19TH RESPONDENT

FARIDAA ABDI ..... 20TH RESPONDENT

HALIMA A. MAINGO ..... 23RD RESPONDENT

HALID IDDY MUSUYA ..... 24TH RESPONDENT

GRESI HANDIHAL ..... 25TH RESPONDENT

JANETH NDIBALEMA ..... 26TH RESPONDENT

JENIFA MBALASWA CHAPA ..... 27TH RESPONDENT

JEREMIA HASSAN JUMA ..... 28TH RESPONDENT

JESCA IGNAS MAHAMBA ..... 29TH RESPONDENT

JOAN LOHAY LEON ..... 30TH RESPONDENT

JOSEPH YOHANA JOSEPH ..... 31ST RESPONDENT

JOYCE JEREMIA KESSI .....32ND RESPONDENT

JUDITH GEORGE CHUMBWA ..... 33RD RESPONDENT

JULIUS DANIEL SILVESTA ..... 34TH RESPONDENT

JULITHA BRIGHTON MUSHOBOZI ..... 35TH RESPONDENT

IBRAHIM MBWANA ALLY ..... 36TH RESPONDENT

IBRAHIM ALLY ..... 37TH RESPONDENT

IDD OMARY GOLAYA ..... 38TH RESPONDENT

KURUTHUM ALLY MWINYIMKUU ..... 39TH RESPONDENT

LEILA SEVERIN NDENGA ..... 40TH RESPONDENT

LEODGER BEATUS KABOGO ..... 41ST RESPONDENT

LETICIA EDWARD KISAMA ..... 42ND RESPONDENT

MARIAMU HUSSEIN KITIA ..... 43RD RESPONDENT

MARIAM RASHID GONDO ..... 44TH RESPONDENT

MARY YOTAMU MUSSA ..... 45TH RESPONDENT

MATHIAS DANIEL SILVESTER ..... 46TH RESPONDENT

MUSTAPHA RAMADHAN KAKOLANYA ..... 47TH RESPONDENT

OMARY SAID MLILIMA ..... 48TH RESPONDENT

PATRIC LAURENT MWENGA ..... 49TH RESPONDENT

RAMADHAN M. RAJAB ..... 50TH RESPONDENT

REGINA JACKSON KIHIRI ..... 51ST RESPONDENT

SAID AZIDI MADAFA ..... 52ND RESPONDENT

SENGI ELIZABETH TIMOTH ..... 53RD RESPONDENT

SHABAN ALLY TINDUA ..... 54TH RESPONDENT

TUMAINI ALFRED KATWANI ..... 55TH RESPONDENT

TWITIKE WILFRED MWASAMBO ..... 56TH RESPONDENT

HASSAN SAID MUTAMBURO ..... 57TH RESPONDENT

HAMZA SAID MUTAMBURO ..... 58TH RESPONDENT

ATUPAKISYE KABALE MWANGUNULE ..... 59TH RESPONDENT

NASSORO F. KSWAGA ..... 60TH RESPONDENT

Date of last Order: 20/09/2022
Date of Judgment:03/10/2022

JUDGMENT

OMARI, J.:

This is a first appeal. It is against the judgment of the District Land and Housing Tribunal for Kinondoni at Mwananyamala (the DLHT) in Land Application 196 of 2018 which was delivered on 08 October, 2021. The said Application was brought against one James NgeLeja (under a Power of Attorney conferred by the administratrix of the estate of Dr. Isaya Simon Mpelumbe, Mary Agnes Mpelumbe). The Applicants were claiming that the Respondent trespassed onto their land, destroyed some houses and other structures. They claimed that they were the legal owners of the said land located in Mabwepande, Kinondoni in Dar es Salaam, which they acquired between 2003 and 2004 from the village authorities and after paying the requisite fees they began clearing their land which was hitherto scrub and thicket. They explained that it was in 2017 that the Respondent invaded onto their land and claimed that it belongs to him. Thus, they went to the DLHT seeking *inter alia*:

1. A declaratory order that the Applicants are the lawful owners of the disputed land.
2. An order for payment of compensation in respect of the houses for the 1st, 2nd, 7th, 12th, 21st, 23rd, 28th, 33rd, 38th, 39th, 41st, 43rd, 45th, 48th,

50th, 53rd, and 56th Applicants as per the photos attached to the Application.

3. Payment of TZS 90,000,000/= the same being general damages for the physical torture they have suffered.

At the DLHT hearing the Respondent disputed the Applicants' claims and stated there nothing on record to show they bought the said land which has never been owned by the Mabwepande village, for them to give away or sell. In his Counter Claim he stated that he bought the land in 1978 at TZS 1200/=. He surveyed the land in 2011 and the survey plan authorized by the Ministry of Lands yielded 34 plots. When he began following up on the offer letter(s), he then found out the Applicants had intruded onto the land and destroyed some of the beacons installed therein during the survey. He reported the intrusion to the police and the District Commissioner but the matter was not settled. He among other reliefs, prayed that the tribunal declares the Applicants trespassers on the suit land and they be restrained form entering the suit land.

The trial tribunal troubled itself with two issues, to wit; who is the rightful owner of the disputed land at Mabwepande, Kinondoni District, Dar es Salaam and to what reliefs are the parties entitled to.

As to who was the rightful owner of the disputed land the Tribunal Chairperson observed that the Applicants had undisturbed use of the land for 14 years and made developments in the said land including construction of dwellings. There was also testimony from the village leadership that was involved in the land allocation. The Respondent claimed to have bought the land in 1978. The said land was neither developed nor tended to, it remained fallow and as a result turned into scrub and thicket thus, the allocation of land to the Applicants in 2003 and 2004. The Chairperson also noted that the Respondent claims to have surveyed the area in 2012 but there was nothing produced in the Tribunal in the form of minutes of the of the Mtaa government recognizing the Respondent and accepting his application to survey the area or anything else of the sort.

The Tribunal Chairperson concluded by agreeing with the assessors' opinions that the Applicants were allocated the said land by the then leadership in 2003 and 2004. In addition, they have enjoyed uninterrupted use of the land for 14 years. In so far as the reliefs which the parties are entitled to, the Tribunal Chairperson allowed the Application, dismissed the Counter Claim and ordered each party to bear their own costs.

Aggrieved, the Appellant knocked the doors of this court, thus, the appeal before me. In his Memorandum of Appeal there are 9 grounds as follows: That the learned trial Chairperson grossly erred in law and facts in determining the matter which had no pecuniary jurisdiction. Secondly, the learned trial Chairperson erred in law and facts in assuming that exhibit A1 and A2 tendered by the 26th and 10th Applicants (PW1 and PW2 respectively) as documentary evidence to cover all Applicants, a fact which is not true. The third ground is that the learned trial chairperson erred in law and in fact by failure to record and adopt the purported witness statements given through Affidavits by rest of the 58 Applicants/Respondents(*sic*).

For the fourth ground he is claiming that in failing to record and adopt witness statements of 58 Applicants/Respondents, the trial Chairperson grossly erred in law and facts by denying the Appellant opportunity to cross examine the witnesses. The fifth ground is that the learned trial Chairperson erred in law and facts in deciding in favour of the Applicants/Respondents while the sizes of the land in dispute falling in every individual Applicant/Respondent were not ascertained save for 26th and 10th Applicants (noted as PW1 and PW2 respectively). The sixth ground is that the learned trail Chairperson erred in law and facts holding that the appellant had no

evidence of developing the disputed land while the same has been developed by planting valuable tree *(sic)* cultivating *(sic)* as well as surveyed in 2011 and approved in 2012 as seen on page 7 of the typed judgment.

They are also claiming that the learned trial Chairperson erred in law and in facts in relying on the absence of minutes of Mtaa government to disregard the Appellant's survey plan approved by the proper authority in 2012, a fact which justify compliance to legal process of acquiring ownership to land. The eighth ground is that the learned trial Chairperson erred in law and facts in deciding contrary to assessors while she admitted in accepting and joining hands with the assessors' opinion as depicted on page 8 of the typed judgment dated 8th October,2021. Lastly the Appellant is claiming that the learned trial Chairperson erred in law and fact in holding that the Respondents have been living in the disputed land 14 years uninterruptedly without considering that the Appellant surveyed the same in 2011. It is on the basis of these nine grounds that the Appellant prays for this court to quash and sets aside the whole Judgment and Decree of the trial Tribunal and the appeal be allowed with costs.

Before going any further, let me, so that it is on record, mention albeit in passing that Fredrick Vicent Sagwa and 9 others claiming to have interest in

the land in dispute filed Land Revision No. 46 of 2021 against Agness Mhando and 60 others (the present Appellant and Respondents) seeking Revision of Land Application No. 196 of 2018. To ensure they were heard the Applicants filed Misc. Land Application No. 14 of 2022 seeking an order for stay of hearing of Land Appeal No. 233 of 2021 (this Appeal) pending the determination of Revision No. 46 of 2022. This was granted. However, upon hearing Revision No. 46 of 2021 which sought to set aside the decision of the DLHT in Land Application No. 196 of 2018, it was struck out for being incompetent as it was filed after this appeal was filed (see **Fredrick Vicent Sagwa and 9 others vs. Agness Mhando and 60 others**, High Court of Tanzania (Land Division), Land Revision No. 46 of 2021.)

During hearing for this appeal, the Appellant albeit being present, enjoyed the services of Felix Makene learned advocate while the Respondents enjoyed the services of Raphael David also learned advocate.

At commencement of the hearing the learned advocate for the Appellant informed the court that they understood the matter was scheduled for hearing and they were ready to proceed. However, they wish to make their submissions by combining some of the grounds for appeal, that is grounds two and five, three and four then six and seven while the rest will be dealt

with as is. He continued to explain that the appeal was against the decision of the DLHT of Kinondoni at Mwananyamala of Land Application 196 of 2018 delivered in 08 October, 2021 before Hon. Mwakibuja, Tribunal Chairperson. He added that his client was aggrieved and raised 9 grounds of appeal against the said judgment and decree; consequently, praying that the decision of the DLHT be dismissed and the appeal be allowed.

He began his submissions with the first ground of appeal, that is the Chairperson erred in law and fact in determining the matter to which he had no jurisdiction. The learned advocate argued that the jurisdiction of the DLHT is by virtue of section 33 (2) (a) of the Land Disputes Courts Act Cap 216 (RE 2009) (the LDCA) and in respect of recovery of immovable property does not exceed TZS 300,000,000/=. He went on to say that pecuniary jurisdiction was not stated in the application before the DLHT. His reasoning was that if the 60 Respondents (the then Applicants in the DLHT) owned land of various sizes including some 60 x 60 human paces and some with as much as an an acre and the said land was said to have houses which the Appellant is alleged to have demolished and on the other hand, they (the Appellant) have 30 acres with 34 plots then logic and common sense would bring one to conclude that the disputed land was above the pecuniary jurisdiction of the

DLHT. He argued that this was so because the land was in a prime area within Kinondoni in Dar es Salaam where land is said to be appreciating in value daily. He called upon the court to raise this issue of pecuniary jurisdiction *suo moto.* To drive home his point, he relied on **Indo African Estates Limited v. Kangolanje Hassani and 53 Others**, Civil Appeal No. 13 of 2022, Court of Appeal of Tanzania at Mtwara where the Court of Appeal (the CAT) nullified the decision of the DLHT and that of the High Court at Mtwara for reason that the pecuniary jurisdiction was uncertain in the DLHT and first appellate court.

In his reply the learned advocate for the Respondents vehemently disputed the assertion that the DLHT had no jurisdiction, he pointed out that Form No. 1 made under Regulation 3(2) of the Land Disputes (The District Land and Housing Tribunal) Regulations GN. 173 of 2003 requires an Applicant to give an assessment of the value of the subject matter and to be more specific Regulation 3(2) (d) requires the estimated value. This was given as required at the time of making the Application before the DLHT. He went on to argue that if the Appellant's counsel held the view that the suit land was beyond TZS 300,000,000/= he should have submitted a valuation report to clear any ambiguity. In the absence of a valuation report this ground is non

meritorious. He went on to explain that the **Indo African Estates Limited v. Kangolanje Hassani and 53 Others**, (*supra)* judgment was inapplicable to the present appeal as the subject matter therein was 2658 acres of land. He further argued that instead of asking the court to raise the issue now, he should have raised it in the trial tribunal. Raising it now on appeal is an afterthought. He called out the whole first ground and the whole appeal for being non meritorious and for it to be overruled and dismissed with costs.

In his brief rejoinder on this issue the learned advocate for the Appellant stated that he stands by what he said in his submission in chief. He went on to pronounce that the learned advocate for the Respondent had misconceived Regulation 3 (2), it does not provide for the jurisdiction of the tribunal rather it provides for how the application before it is to be made. Jurisdiction on the other hand is provided for in section 33 (2) (a) of the LDCA.

He also explained that the issue of the valuation report should not be tasked upon the Appellant, rather it should be the Respondents to have that burden for they needed to establish both pecuniary and territorial jurisdiction. He reiterated his submission over the raising price of land and insisted that the

Indo African Estates Limited case (*supra*) is not distinguishable since land in Kinondoni is more valuable that other areas in Tanzania. He concluded by stating that the learned advocate for the Respondent is once again misconceived, the issue of jurisdiction can be raised at any time as held various times by this Court and the CAT.

Since the question of jurisdiction is one of law, I wish to dispose of it before going any further to the other grounds of appeal. The issue is whether it is actually meritorious as a point of law in this particular appeal. The test is found in none other than the famous case of **Mukisa Biscuits Co Ltd. vs. West End Distributors Ltd.** (1969) EA 696 to wit:

> *'So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary objection may dispose the suit ...'*

The Appellant herein is claiming that the DLHT did not have jurisdiction. Being this is a point of law it cannot be shrugged off by this Court. The question here is whether the DLHT had pecuniary jurisdiction to entertain the dispute in the first place. To establish this, a close scrutiny of the record of the proceedings of the DLHT is warranted. The Applicants in paragraph

4 of their Application estimated the value of the land at TZS 96,000,000/=, the Respondent *inter alia* noted the estimated value in paragraph 4 of their reply and counter claim. When the Applicants filed their Amended Application in the DLHT on 24 September, 2018 they estimated the value of the suit property at TZS 120,000,000/= once again the Respondent noted the same in his reply and notice of a preliminary objection filed on 05 November, 2018.

While jurisdiction can be raised at any point, in this particular instance, working on the estimated value by the Applicants and that there was no valuation report to prove otherwise the DLHT was, in my opinion, justified in hearing the Application. Furthermore, the counsel for the Appellant is mistaken in regarding the value of the land in the area where the disputed land is in his words 'raising daily.' This might be true, but they should have considered the value of the said land at the time of making the Application and or produced a valuation report, not mere averments.

Having established that the DLHT had jurisdiction to hear Land Application No.196 of 2018, it is now an opportune moment to segue into the other grounds as submitted.

Submitting on the second and fifth grounds of appeal as combined the learned advocate for the Appellant averred that it was a settled principle of law under the section 110 (2) of the Evidence Act Cap. 6 R.E 2019 (TEA) that the burden of proof lies with the one who alleges. He went on to say the Applicants (now Respondents) were 60 and had individually claimed against the Appellant. Other than the 26th and 10th Applicants who testified in the DLHT claiming they had an acre and 60 x 60 human paces respectively there was no record in the proceedings and judgment of the DLHT dated 08 October, 2021 stating in unequivocal terms the size and description of the land likely to fall in the hands of the remaining 58 Respondents. Even the two who gave the size of their respective land did not do a description of the said land which is extremely important in unsurveyed areas.

In addition, he went on to submit that the judgment and proceedings of the DLHT gauge exhibit A1 and A2 to cover all the Applicants a fact which is not true. Contending that the 58 others had nothing to show for to prove ownership of the said land. He galvanized his argument by adding that in the circumstances where size, description and boundaries of the disputed land is not certain or even stated such omission is fatal in law as it will result into problems in the cause of execution, if any. The learned advocate

referred to what he called the persuasive decision of **Jeneroza Prudence vs. Mutungwa Salvatory,** Land Case Appeal No. 25 of 2020 where the High Court decided that such an omission (of not giving the size and description) renders the decision null.

In reply, the Respondent's advocate argued that it is shown on the record that other than the 26th and 10th Applicants the rest filed affidavits in lieu of oral testimony. He went on to assert that the case that the learned counsel sought to rely on to make his argument cannot be applied to this case. Further he asserted that under Order XIX Rule 2 (1) of the Civil Procedure Code, Cap 33 (RE 2019) (the CPC) a party can be called for cross examination upon request, it is not an automatic right. They chose not to cross examine then; it is therefore immaterial now. He finished off by asserting the documentation for the Respondents include receipts and form for each one indicating the size of the land allocated. To think execution will be difficult or impossible is a misconception since each of the Respondents know well the size of the land they own.

Having gone through the record of the DLHT and having seen the Applicants (now Respondents) submitted a form bearing the title '*Fomu ya Kujiunga na Kijiji cha Mabwepande'* meaning Application to Join Mabwepande Village

attached with a payment receipt of the requisite fees. The form in Part D bears the description '*Maoni ya Kamati ya Kijiji' meaning* Decision/Opinion of the Village Committee; this part of the form details the size of the land allocated to each person. Some went on ahead and appended pictures of the structures on their allocated land.

The issue is whether this suffices to be a description of the size and location of the land. The Court in **Daniel Dagala Kanuda (as Administrator of the Estate of the late Mbalu Kushaha Buluda vs. Masaka Ibeho and 4 Others,** Land Appeal No. 26 of 2015, High Court (Land Division) at Tabora (unreported) had plenty to say about proper description of the suit land enables proper award of rights to a party and also easy execution; specifically, it stated:

> '*The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying*

the suit land specifically so as to effectively distinguish it from any other land adjacent to it."

This was also the view of the Court in **Registered Trustees of Masjid Jumuiyatil Islamia Ubungo Kinondoni vs. Halima A. Kebe & Omari Sulieman Magingo,** Land Case No. 114 of 2019, High Court, Land Division (unreported). In the present appeal, it is more than obvious that the suit land was not sufficiently described to the DLHT by any of the parties.

Submitting on ground three and four which the learned advocate for the Appellant combined and argued simultaneously, he explained that there must be sufficient reason to resort to giving evidence through Affidavits. The Tribunal Chairperson did not give any reason why the 58 Respondents were purported to have given their evidence through affidavit. He went on to say that the evidence was not recorded or adopted in the tribunal. It was also not subjected to cross examination. He argued that the Tribunal and the Respondents failed to comply with the law in respect of production and tendering of witness statements in court as stipulated in Order XVIII Rule 5 (1) – (4) of the CPC. The consequences for which are striking out the statements and by law the tribunal should have disregarded the evidence of the 58 Respondents.

The learned counsel for the Respondent in his reply, submitted that the Affidavits in lieu of oral testimony was used pursuant to leave of the Tribunal, both parties agreed and the same is on record. He went on to argue that there was no requirement that they appear for cross examination because neither party had requested for cross examination. He asked the court to take into account and consider the purpose of flexibility of the procedures before the Tribunal as governed by the LDCA read together with the Regulations and in particular section 45 of the LDCA. He concluded his submission on ground three and four as argued are not meritorious.

While I tend to agree with the learned advocate for the Respondent, I am also mindful of the fact that the record is clear there was an order for affidavits to be filed and that there will be cross examination. According to the record the order was prayed for on 06 August, 2020 and granted on 08 September, 2020. However, there is nothing on record to show what happened to the affidavits nor the cross examination. The DLHT went straight to final submissions and Judgment thereafter. Clarity on the record would have waned off any nuances of impropriety claimed by the Appellant.

Submitting on ground six and seven the Appellant's advocate stated that it was on record of the proceedings that the Appellant bought the land in 1978

a fact which was not disputed by the Respondents. The Appellant planted some trees, some still exist while others had been cutdown by the Respondents. In 2011 the Appellant surveyed the land and the plan was approved in 2012. The said plan was tendered in court, but it was not indicated to have been admitted or not. It is illogical for the DLHT to dispute a government document, had it been the case then the Chairperson should have enquired or sought clarification from the respective authority. He explained that, the issue as to the minutes of the Mtaa Government as indicated in the judgment should not arise since the existence of the approved survey rebuts the need for the minutes as they seize to be in effect after approval of has been occasioned. Thus, the argument that they needed to be tendered is baseless.

The Respondents' learned advocate in his reply on grounds six and seven argued that while the Appellants asserted to have developed the land which he purchased in 1978 they did not submit any proof of the purchase or even that they have development on the land. While the record shows that the Appellant in his Counter Claim reported to have lost the contract for the purchase of the said land it is not clear why there is nothing else other than the purported survey plan which in itself cannot be taken on face value. The

surveying process involves communication with the local government authorities and perhaps the insistence on the minutes of the Mtaa government meeting.

It is in my view that it is not enough to have a survey plan it had to be explained and evidence adduced in the DLHT how the same was obtained therefore backstopping the argument that the land was legally acquired and survey legally done.

On ground eight, the advocate for the Appellant argued that it is an undisputed fact that the Chairperson of the DLHT is not bound by the assessors' opinions, however, the law requires that where the Chairperson disregards or disagrees with assessors he or she should give reasons for doing so. He went on to point out that on page 8 of the judgment of the Tribunal dated 08th October, 2021 the Chairperson asserted to have agreed with the assessors' opinions. He went on to state that the Chairperson used the phrase '*naungana*' which literally means I am in agreement. If the Chairperson was in agreement with the assessors' opinions, they should have been reflected in the judgment of the DLHT. Nonetheless, throughout there is not a single statement stating in unequivocal terms the assessors' opinions which the Chairperson seems to agree and join hands with on page 8 of the

typed judgment. The learned advocate went on to argue that the assessors' opinions as per the record was not centred on all of the 60 respondents. He also mentioned that the opinions were not read to the parties. The learned advocate asked this court to consider the CAT decision of **Paul Mushi (as an Attorney of Salim Ally) vs. Zahra Nuru,** Civil Appeal No. 221 of 2019, Court of Appeal of Tanzania at Dar es Salaam (Unreported).

In reply to the eighth ground the Respondents' learned advocate went straight to section 24 of the LDCA asserting that assessors are to compose their opinions in writing after the completion of evidence. He passionately explained that the two assessors complied with this requirement. The Chairperson agreed with the two assessors as per their written opinions. He went on to state that the circumstances in the **Paul Mushi (as an Attorney of Salim Ally) vs. Zahra Nuru** case (*supra)* could not be equated to the current appeal as in that particular case there were no assessors' opinions on the record at all.

Having scrutinized the record, it is unclear which of the 60 Respondents were the assessors referring to nor was it clear that it's all 60. Moreover, the record does not depict that the opinions were read over to the parties. The advocate for the Appellant argued that the opinions were only with regard to 14 of

the 60 Respondents. However, in their hand written opinion(s) both assessors spoke of 28 respondents without disclosing which ones. Perhaps it is this lack of clarity that made the Chairperson go for all, one could assume, for good measure.

I am aware that the issue of the assessors' opinions not being read and recorded in the presence of the parties is not amongst the grounds of appeal as lodged in the Memorandum of Appeal it is in my view one that can piggyback on the eighth ground without any injustice being occasioned. I hold this view because for the parties to know the nature of the opinion and whether or not the same has been considered by the Chairperson in the final verdict or where the Chairperson disagreed and has to give reasons as to the disagreement or departure; the said opinions have to be read in their presence. This is the position of the CAT as it was held in **Tobone Mwambeta vs. Mbeya City Council,** Civil Appeal No. 287 of 2017, the Court of Appeal of Tanzania at Mbeya**.**

Further scrutiny of the record depicts both the handwritten and typed proceedings show that on 06 September, 2021 which was set for judgment the Chairperson informed the Tribunal that the opinion(s) of the assessors were not completed, he the ordered for the same to be ready before 20

September, 2021 and judgment for 28 September, 2021. On 28 September, 2022 there was order for judgement to be delivered on 08 October, 2021 when it was actually delivered. There is nothing on record to show the assessors opinions were read in the presence of the parties.

The omission to record and read over the assessors' opinion(s) has been decided in various cases including that of **Paul Mushi (as an Attorney of Salim Ally) vs. Zahra Nuru** (*supra)* where the CAT nullified the proceedings and quashed the judgment for such failure.

This brings us to the last ground for the appeal as argued by the Appellant's learned advocate. That is, if one were to count from 2004 and add 14 years it comes to 2015; the Appellant surveyed the land in 2011/2012. It clearly shows when the Appellant was surveying the land the Respondents were living on the land, they never complained. He actually left it as a question that is why keep quiet when the land was being surveyed by the Appellant?

The learned advocate for the Respondents on the other hand countered this submission by stating that the allocations began in 2003. He added that even though the Appellant claims to own the land since 1978 he has brought

nothing to show this; the site plan (survey document) does not prove ownership neither should it be taken to be authentic at face value.

It is in my considered opinion that it the duty of the Appellant who alleges to have interrupted the Respondents in 2011 and 2012 when the survey was being done to prove that as they, the Respondents are on record as being interrupted in 2017.

Having summarized the submissions and arguments by both learned advocated while also analysing the same; I am now in a position to render a determination of the appeal before me. The first ground, as I have already stated above, does not stand since the Tribunal had jurisdiction to handle matter. On the second and fifth grounds of appeal, it is my view that there is a fundamental irregularity, the description of the size and location of the land was insufficient.

For grounds three and four of the appeal I hold the view that although it is on record that some of the Applicants and the Respondent would use affidavits in lieu of oral evidence; however, the record could have been clearer to rid the nuances of impropriety as alleged by the Appellant. It is my considered view that the Appellant failed to prove their grounds six and

seven of the appeal. As for the eighth ground, the omission to state why the Chairperson is departing from the assessors' opinion as well as not recording that the same were read in the presence of the parties is in my view, another fundamental irregularity. Regarding ground nine, the Appellant also failed to prove the same. In the midst of all the aforementioned, and more so the irregularities pointed out, one can safely say there is no proper judgment before this court for it to entertain an appeal.

I am enforced to rely on the provision of section 43 (1) (b) of the LDCA which reads:

> *'In addition to any other powers in that behalf conferred upon the High Court, the High Court (a) .... (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit. (Emphasis supplied)*

The above section vests revisional powers to this court. I invoke the said powers and proceed to revise the proceedings of the DLHT for Kinondoni at Mwananyamala in Land Application No. 196 of 2018 in the following manner:

1. The Judgment, Decree and Proceedings of the DLHT in Land Application No. 196 of 2018 are quashed;
2. I remit the case file to the DLHT for Kinondoni for retrial before another Chairperson in accordance with the law;
3. I direct, there be priority in scheduling and hearing to end within six months from the date of this Judgment; and
4. Appeal is allowed without costs.

Order accordingly.

A.A. OMARI

JUDGE

03/10/2022

Judgment delivered and dated 03rd day of October, 2022 in the presence of the learned advocate for the Appellant and in the presence of the 6th, 33rd, 53rd and 56th Respondents.

A.A. OMARI

JUDGE

03/10/2022