

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

MISC. LAND APPEAL NO.44 OF 2017

(Arising from the District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Land Application No.337 of 2010)

MOHAMED HAMISI MADEBE APPELLANT

VERSUS

ANNAMECIA MAEDA RESPONDENT

JUDGMENT

Date of Last Order: 16.06.2022

Date of Judgment: 24.06.2022

A.Z.MGEYEKWA, J

This appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 337 of 2010. The matter of controversy between the parties to this appeal is on the landed property. The material background facts to the dispute are briefly as follows; the appellant filed a case at the District Land and Housing Tribunal in Land Application No. 337 of 2010 against the respondent claiming that the respondent has invaded his land which was

measuring ½ acre located at Changanyikeni, Mbuyuni within Kinondoni District. The appellant alleged that in 1990 he bought the suit land from Mwinyi Mussa to a tune of Tshs. 100,000/-. The appellant prayed to be declared a legal owner of the suit land and he prayed for the tribunal to evict the respondent.

On their side, the respondent refuted the appellant's claims. The respondent contended that she is the lawful owner of the suit land. He claimed that on 19th September, 2018 the appellant's young brother sold him the suit land to a tune of Tshs. 15, 000,000.

In this appeal, the appellant has accessed the Court seeking to impugn the District Land and Housing Tribunal decision through a memorandum of appeal premised on 8 grounds of grievance and 1 additional ground, namely:-

- 1. The Honourable Chairman of the Tribunal erred in law and fact by finding and holding that the respondent is the lawful owner of the suit land without sufficient evidence in support thereof.*
- 2. The Honourable Chairman erred in law and fact by finding and holding that the appellant had sold the suit Plot to his younger brother Jumanne Hamisi Madebe in 1994 in view of insufficient and contradictory evidence in support thereof.*

3. *The Honourable Tribunal Chairman erred in law and fact by finding and holding that Jumanne Hamisi Madebe was the lawful owner of the suit property before his sale of the same to the respondent in view of the insufficient and contradictory evidence in support thereof.*
4. *The Honourable Tribunal Chairman erred in fact by holding that the dispute between the appellant and one Jumanne Hamisi Madebe related to the distribution of proceeds of sale while in fact, it related to Jumanne Hamisi Madebe's act of selling the suit property.*
5. *The Honourable Tribunal Chairman erred in fact by finding that one Jumanne Hamisi Madebe had built on the suit property a house while the evidence on record shows that he only built an unfinished hut raised up to lintel level only.*
6. *The Honourable Tribunal Chairman erred in fact by holding that Plot No. 36/39 subsequently became Plot No. KAW/CGN/505 given insufficient and contradictory evidence on record relating to that proposition.*
7. *The Honourable Tribunal Chairman erred in law and fact by relying on the minutes of the alleged conciliation meeting supposed to have been held at the Mtaa Office on 13th January, 2010 is good evidence to establish that the appellant only disputed the distribution of proceeds of sale in view of discrepancies and deficiencies in the said minutes relating to proof of that fact.*

8. *The Honourable Tribunal Chairman erred in law by misapplying the maxim "quicquid plantatur solo solo cedit" to hold that since Jumanne Hamisi Madebe was the acknowledged owner of the unexhausted improvements on the suit plot then by that fact he is also the owner of the land below his structure.*
9. *The Honourable Tribunal Chairman decided the matter contrary to section 23 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019].*

When the matter was called for hearing on 16th June, 2022, the hearing proceeded through video conferencing, the appellant enlisted the legal service of Mr. Mussa Mhagama, learned counsel and the respondent enjoyed the legal service of Mr. Epharo, learned counsel.

In prosecuting this appeal, the appellant's Advocate opted to start with the additional ground. He contended that the District Land and Housing Tribunal decided the matter contrary to section 23 (2) of the Land disputes Courts Act, Cap. 216 [R.E 2019]. He added that the law requires the Chairman to sit with assessors and after a hearing, he is required to invite the assessors to state their opinion before the tribunal delivers its judgment. Mr. Mussa went on to argue that in the matter at hand the tribunal did not record the assessors' opinion and the same was not shown in the tribunal proceedings.

The learned counsel for the appellant asserted that the Chairman in his judgment did not record the opinion of assessors contrary to Regulation 19 (2) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations, 2003. The applicant invokes this Court's jurisprudence in the case of **Yunus Juma Lingano v Chad & Halima**, Land Appeal No. 72 of 2019. He urged this court to find out that the Chairman did not follow proper procedure in hearing the matter thus the same be nullified.

The learned counsel for the appellant prayed to combine the 1st to the 8th grounds of appeal because they are intertwined. Mr. Mussa argued that the respondent's evidence and exhibits D1 and D2 were enough to prove that the respondent acquired the suit land from the appellant's siblings. He added that the appellant's siblings' evidence was supported by the appellant that various buyers were directed to liaise with his siblings including mosque leaders. He added that the same reveals that he had no legal ownership over the suit land.

Mr. Mussa continued to submit that the record shows that the respondent sold a piece of land to the appellant but he failed to prove if the transfer of the suit land was effected for the reason that Jumanne claims that he bought the suit land to a tune of Tshs. 450,000/= and alleged that he handed over the money in the respondent's office at the

University of Dar es Salaam. However, DW3 testified to the effect that the payment exercise took place at the respondent's premises. Mr. Mussa insisted that the tribunal failed to evaluate evidence since even the sale was made on unregistered land and the description and size of the said land was not mentioned.

The learned counsel for the appellant continued to argue that DW2 did not prove his ownership and exhibit D4 was an immaterial document to enable the Chairman to rely upon because the same was not signed. He submitted that the evidence of the appellant was heavier to enable the Chairman to decide in his favour. To bolster his submission he referred this court to the case of **Hemedi Said v Mohamed Mbilu** TLR (1984) 113.

On the strength of the above submission, the appellant's Advocate beckoned upon this court to grant the appeal and quash the proceedings of the District Land and Housing Tribunal with costs.

In reply, the counsel for the respondent's confutation was strenuous. He came out forcefully and defended both tribunal decisions as sound and reasoned. In regard to the additional ground, Mr. Epharo submitted that the assessors' opinions were stated in the judgment therefore it is untrue to say that section 23 of the Land Disputes Courts Act, Cap. 216 and

Regulation 19 (2) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations, 2003. He went on to submit that the assessors' opinions were recorded that is why the Chairman differed with the assessors' opinions. To support his submission he referred this court to page 9 of the tribunal's judgment.

With respect to the 1st to 8th grounds of appeal, Mr. Epharo asserted that the respondent's evidence and the exhibits D1 and D2 proved that the respondent acquired the suit land from the appellant's siblings and he followed all the legal procedures in acquiring the suit land. He added that since the appellant's siblings liaise with the Mosque leaders the same means the appellant had no legal ownership over the suit land. The learned counsel for the respondent claimed that one cannot sell a piece of land if he has no good title. To buttress his contention he cited the case of **William Gethari v Equity Bank**, Misc. Land Application No. 64 of 2021.

The learned counsel for the respondent went on to submit that DW2 occupied the suit land since 1994 and there were no any complaints until when the DW2 sold the suit land to the respondent. He submitted that as per DW2 evidence the sale was done based on their relationship.

On the strength of the above submission, he beckoned upon this court to dismiss the appeal for being demerit.

In his brief rejoinder, the counsel for the appellant maintained his submission in chief. He urged this court to analyse the evidence on record. The learned counsel for the respondent contended that the issue before this court is whether DW2 had a better title to transfer the suit land to the respondent. Ending, he urged this court to grant the appellant's appeal.

I have considered the rival arguments by the parties to this appeal. Before I started 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. He contended stated that the assessors testified instead of stating their opinions. The learned counsel for the respondent simply submitted that the assessors' observations are reflected in the judgment.

In addressing the point of law, *whether the assessors' opinions were reflected in the tribunal proceedings and whether they read over to the parties*. The requirement of two assessors to give their opinion before the Chairman reached the judgment is well articulated under section 23 (2) of

the Land Disputes Courts Act, Cap. 216. For ease of reference, I reproduce it hereunder:-

*“ 23 (2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and **two assessors who shall be required to give out their opinion** before the Chairman reaches the judgment.” [Emphasis added].*

Equally, in the case of **Mohsin v Taningra Contractor** Land Appeal No. 133 of 2009, where the Chairman did not indicate the assessors' opinions, 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”.

Similarly, 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].

Also, 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 so as 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 at the conclusion of 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 shows the opinion of one assessor Mbakileki. However, the law requires two assessors to state their opinion in writing. The Chairman of the District Land and Housing Tribunal referred to the assessors' opinion in his judgment while only one assessor filed his opinion in writing.

Moreover, assessors' opinions cited by the Chairman in his judgment were not read in the presence of the parties before the judgment was composed. 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.

Following the above findings and analysis, I invoke the provision of 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.337 of 2010 in the following manner:-

- (i) The Judgment, Decree, and the proceedings from 17th January, 2017 of the District Land and Housing Tribunal in Land Application No. 337 of 2010 are quashed.
- (ii) I remit the case file to the District Land and Housing Tribunal for Kinondoni at Mwananyamala before another Chairperson to

record the assessors' opinion and compose a new Judgment within 6 months from the date of this judgment.

(iii) No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 24th June, 2022.




A. MGEYEKWA

JUDGE

24.06.2022

Judgment delivered on 24th June, 2022 via audio teleconference whereas

Mr. Benedict, learned counsel for the appellant and Mr. Banda, learned counsel for the respondent were remotely present.




A. MGEYEKWA

JUDGE

24.06.2022

Right of Appeal fully explained.