

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

**MISC. LAND APPEAL NO. 18 OF 2022**

(Arising from the District Land and Housing Tribunal for Temeke vide Land Appeal No. 40 of 2016 which originated from the decision of Kibada Ward Tribunal in Land Case No. 21/2014)

**REBECCA JACOB ..... APPELLANT**

**VERSUS**

**LEVIS WAMOYA ..... RESPONDENT**

**JUDGMENT**

*Date of Last Order: 20/6/2022*  
*Date of Judgment: 12/7/2022*

**A. MSAFIRI, J**

The Appellant having been dissatisfied by the judgment and decree of the District Land and Housing Tribunal for Temeke (herein as District Tribunal) sitting as appellate Court in Land Appeal No. 40 of 2016, has filed the present appeal basing on the six grounds of appeal which I will not quote them here as they are part of the Court record in this appeal.

The appeal originates from Kibada Ward Tribunal in Land Case No. 21 of 2014. The appellant instituted a land dispute at the said Ward Tribunal claiming that the respondent has trespassed on part of her land and erected a structure therein. The respondent denied the claims and stated that the

*Alle*

disputed piece of land is part of his land which was sold to him by one Abdallah Ali Abdallah and Shomari Ali Abdallah.

After hearing the evidence from both side of the dispute, the Ward Tribunal decided in favour of the appellant and declared her the lawful owner of the disputed piece of land. The respondent was dissatisfied and lodged an appeal before the District Tribunal.

However, the instituted appeal No. 40/2016 was dismissed with costs on 30/11/2016 for want of prosecution. The present respondent applied then for the restoration of the same. The application for restoration was heard on 20/8/2018 in presence of both parties before the District Tribunal. On 18/10/2018, the prayers for restoration was granted and the District Tribunal ordered for the restored appeal to be heard inter parties on merit. After hearing of the appeal, the District Tribunal decided in favour of the respondent, the act which aggrieved the appellant hence this appeal.

The hearing of appeal before me was orally and the appellant appeared in person, unrepresented. The respondent was represented by Mr. Gordon Nashon, learned advocate.

The appellant submitted in support of the appeal by starting with ground of appeal No. 6 which stated that the Appellate Chairperson erred by nullifying the judgment of the Ward Tribunal by reason that the same was not properly constituted. *Adde.*

The appellant contended that this was not true because there were six (6) members of Ward Tribunal on all dates of hearing of the matter. She said that, the Ward Tribunal was chaired by Kijakazi Juma and the Tribunal secretary did not count as a member. She added that the list of members is clearly shown on the decision of the Ward Tribunal dated 02/2/2015.

Furthermore, she argued that, as the composition of the Ward Tribunal was not among the grounds of appeal at the District Tribunal, the Appellate Chairperson should have asked the parties to address the Tribunal on the matter before deciding on it. She stated that this prejudiced the parties. She prayed for the Court to nullify the decision by the District Tribunal.

In reply, Mr. Nashon submitted that, the reasons for decision of the District Tribunal were revealed in the judgment. He stated that, furthermore, because the respondent in this appeal was the original owner of the land in dispute, then the District Tribunal was right to decide that the land should remain under his ownership. Unfortunately, Mr. Nashon did not submit on the issue of the composition of the members of the Ward Tribunal.

To determine this ground, I read the judgment of the District Tribunal as an Appellate Tribunal. After having gone through the Ward Tribunal's proceedings and its decision which was a photocopy, the appellate Chairperson went on to raise the issue of composition of the members of the Ward Tribunal, suo motu. The appellate Chairperson concluded that the trial Ward Tribunal was not properly constituted for the reason that the

*Alls.*

Ward Tribunal secretary is not a member of the Tribunal and should not take part in decision of the matter. The appellate Chairperson stated that the major role of the said secretary is just to record the proceedings only. Looking at page 4 and 5 of the judgment, it is clear that the appellate Chairperson based mainly his decision on the supposed "legal errors" on the Ward Tribunal proceedings and judgment.

Having found that there were legal errors, as correctly pointed by the appellant, the appellate Chairperson did not accord the parties the right to address the Court on the said legal errors. I have also read through the proceedings during the hearing of the first appeal before the District Tribunal. The issue of composition of the Ward Tribunal was never raised by any party during the proceedings/hearing of the appeal.

At page 5 of judgment, the appellate Chairperson stated thus;

*"Going through the Ward Tribunal judgment, I have found many legal errors including members of the Ward Tribunal listed their names only at the judgment day".*

The said Chairperson went on to pronounce his judgment without addressing to the parties the issue of composition the Ward Tribunal and giving them an opportunity to be heard on the issue.

I am of the view that, giving the parties a chance to address the issue on the legal errors as it was put by the appellate Chairperson was fundamental

*Atle.*

to the parties. This is because as I have quoted herein above, the decision of the District Tribunal was based on the un-pleaded issue of the composition of the Ward Tribunal.

The importance of giving parties an opportunity to be heard has been emphasized in numerous authorities including the case of **Wegesa Joseph Nyamaisa vs. Chacha Muhogo**, Civil Appeal No. 61 of 2016 where the Court of Appeal held that;

*"Failure to give parties right to address the court renders the decision reached thereof a nullity for having violated the principle of natural justice of the right to be heard".*

Guided by the above principle by the Court of Appeal, I find that, failure of the appellate Chairperson to give opportunity to the parties to address him on the issue of the composition of the Ward Tribunal, renders the decision of the District Tribunal a nullity.

Unfortunately, this cannot be cured under Section 45 of the Land Disputes Court Act, Cap 216 R.E 2019 which provides;

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence **unless such error or omission or irregularity** Alls.*

***or improper admission or rejection has occasioned a failure of justice”  
(Emphasis added).***

The right to be heard being fundamental right to the parties, it is my finding that the omission by the appellate Chairperson occasioned a failure of justice to the parties particularly the appellant.

Before concluding on this ground of appeal, it was the contention of the appellant on the ground No. 6 of the appeal that the appellate Chairperson erred by nullifying the judgment of the Ward Tribunal without giving out the reasons to do so. In her submission before the Court, the appellant said that the District Tribunal decided that the land in dispute belongs to the respondent without giving any reasons. In reply, as I have observed earlier, Mr. Nashon contended that, the reasons for decision of the District Tribunal were revealed in the judgment.

Having read the whole impugned judgment of the District Tribunal, I am inclined to agree with the contentions of the appellant. After giving brief narration of the issues raised in the submissions by the parties during the hearing of appeal, the appellate Chairperson, went on to raise the issue of the composition of the Ward Tribunal suo motu. After that she repeated the opinion of the assessors who advised that the prayers by the appellant be granted with costs.

*Adls*

The appellate Chairperson stated that she has no reasons to depart from the assessors' opinion. She did not bother to analyse the evidence which led her and the assessors to reach at mutual findings that the prayers of the appellant should be granted.

It is my view that, having found that there was irregularity on the composition of the Ward Tribunal, and after giving parties the right to address on that, the Chairperson should have nullified the decision of the trial Ward Tribunal and ordered a retrial. Instead the appellate Chairperson, nullified the proceedings and judgment of the trial Tribunal and proceeded to award the appellant. I find this to be glaring procedural error and the appellate District Tribunal should have dealt with the matter as per the provisions of Section 35(1) (d) of the Land Disputes Courts Act (supra).

In addition, the appellate District Tribunal did not address all the issues which were raised by parties during the hearing of appeal, did not analyse the evidence adduced during the trial which was a source of controversy between the parties. The only glimpse of issue which was addressed by the appellate District Tribunal was the one of the size of area in dispute. However, there was no analysis on how the appellate Tribunal reached to the said conclusion.

Regulation 20(1)(a)(b)(c) and (d) of the Land Disputes Courts (The District Land and Housing Tribunal Regulations) G.N. 174 of 2003, provides that; *Adls.*

*20(1) The judgment of the Tribunal shall always be short, written in a simple language and shall consists of*

- a) a brief statement of facts*
- b) findings on the issues*
- c) a decision, and*
- d) reasons for the decision.*

In the Court of Appeal case of **Lutter Symporian vs. Attorney General and Ibrahim Said Msabaha**, Civil Appeal No. 24 of 1999, CAT (unreported), the herein above position was emphasized where it was held that;

*"A judgment must convey some indication that a judge or magistrate has applied his mind to the evidence on the record. Though it may be reduced to a minimum, **it must show that no material portion of evidence laid before the Court has been ignored"** (Emphasis added).*

As observed earlier, the appellate Tribunal judgment dated 19/6/2020 lacks the mentioned required ingredients. The evidence of parties and issues raised were never evaluated and analysed. The judgment did not reveal how the District Tribunal arrived at the decision of allowing the appeal and declaring the appellant as the owner of the land in dispute. Further, there was no reason(s) why the defence/evidence of the respondent was rejected by the said District Tribunal.

*Alle.*



Basing on the glaring errors as I have observed and analysed, I find no need to determine the other grounds of appeal.

I hereby quash and set aside the judgment and decree of the appellate District Tribunal. I order the case file to be remitted back to the appellate District Tribunal before the same appellate Chairperson for composition of a new, proper judgment. The appellate Chairperson may call upon parties and afford them the right to be heard on the un-pleaded issue of the composition of members of the trial Ward Tribunal which was raised suo motu.

Appeal allowed to that extent. I give no order for costs. Right of appeal explained.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI,**  
**JUDGE**  
**12/7/2022**