

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

**LAND APPEAL NO. 146 OF 2020**

*(Appeal from the decision of Kinondoni District Land and Housing Tribunal at  
Mwananyamala in Land Application No.283 of 2008)*

**CONRANDINA UNDOLE.....APPELLANT**

**VERSUS**

**JULIETH KOMBE .....1<sup>ST</sup> RESPONDENT**

**ZENA MILALA HUSSEIN** (Administratrix of the  
Estate of Late Agnes E. Kombe) .....**2<sup>ND</sup> RESPONDENT**

**UPENDO HAJI** (Administratrix of the Estate  
of the Late Zacharia Kingu) .....**3<sup>RD</sup> RESPONDENT**

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

*Date of last Order: 16/11/2021*

*Date of Judgment: 11/02/2022*

**T. N. MWENEGOHA, J.**

Being aggrieved by the decision of the Kinondoni District Land and Housing Tribunal at Mwananyamala (herein after **the trial Tribunal**) in Land Application No. 283 of 2008 delivered on the 3<sup>rd</sup> May 2018 appeals before this court against the whole judgment and decree on the following grounds;

1. The District Land and Housing Tribunal erred in law by hearing the matter and delivering of the judgment in the absence of court assessors whose opinion were never considered at all contrary to the provision of the law;

2. That the District Land and Housing Tribunal's decision is devoid of merit as it failed to consider evidence before it;
3. That the District Land and Housing Tribunal erred in seriously in facts by ignoring the evidence of the Applicant witness one Kondo J. Mkwawa who witnessed the sale of the said land to the applicant in 2005 and it does not even state what the witness said in his testimony;
4. That the District Land and Housing Tribunal erred in law and facts by judging in favor of the current respondent despite the failure of the trial Tribunal to assess and evaluate the evidence adduced by the parties;
5. That the District Land and Housing Tribunal seriously erred by failing to site visit as the chairman had promised to do site visit before delivering judgment in order to meet the ends of justice;
6. That the District Land and Housing Tribunal seriously erred by failing to show any single ground on which the decision and further it does not even address and conclude the main issues of the case, plus no particular order was given basing on the issues framed;
7. That the District Land and Housing Tribunal decision was erred in law and in fact by judging in favor of the current respondent despite the failure of the trial Tribunal chairman to accord the assessors with opportunity give their opinion according to the law and record the same in the judgment.

Wherefore, it is the appellant's prayer that the appeal be allowed and order the matter be tried de novo, and costs of the appeal be borne by the respondent.

Hearing of this appeal proceeded by written submissions and parties adhered to the submission schedule. Both parties were represented, while the appellant was represented by Ms. Joram, Advocate, the respondent was represented by Mr. Charles L. M. Lugola, Advocate.

Submitting in support of the appeal Ms. Joram decided to abandon the 6<sup>th</sup> ground of appeal and merge the remaining six grounds of appeal into three major grounds which are as follows;

1. The 1<sup>st</sup> and 5<sup>th</sup> grounds of appeal were consolidated, and argued as one ground which read as follows;

That the District Land and Housing Tribunal erred in Law by hearing the matter and delivering of the judgment in absence of court assessors whose opinions were never considered at all contrary to the provision of the law;

2. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal were consolidated and argued as one ground which read as follows;

That, the District Land and Housing Tribunal's decision is devoid of merit as it failed to consider evidence before it by ignoring the evidence given by applicant's witness one Kondo J. Mkwawa who witnessed the sale of the said land to the Applicant in 2005 and it does not even state what the witness said in his testimony;

3. That the District Land and Housing Tribunal seriously erred by failing to do site visit as the Honorable Chairman had promised to do site visit before delivering judgment in order of meet the ends of justice; and

Submitting on the 1<sup>st</sup> consolidated ground of appeal Ms. Joram submitted that the trial Tribunal intentionally entered judgment in the absence of the court assessors contrary to the provision of the laws. To support her argument, she cited the provision of **Section 23 (1), (2) (4) and 24 of the Land Disputes Court Act Cap 216 R. E. 2019, the provision of the Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation GN No. 174 of 2003** (herein after **GN 174 of 2003**), and the case of **Edina Adam Kibona vs. Absolom Swebe (sheli), Civil Appeal No. 286 of 2017 [2018] TZCA 310**. She finalized by submitting that, it would have been fair for the chairman to wait for the assessors to renew their contract of employment, by adjourning hearing of the case until when he is assured about the existence of the assessors.

Submitting on the 2<sup>nd</sup> consolidated ground, Ms. Joram submitted that the Tribunal erred in law by not considering all the evidence tendered before it. To support her argument, she cited of Regulation 20 (b) of the **GN 174 of 2003**.

Ms. Joram further stated that, during the hearing before the trial Tribunal both parties brought their witnesses to testify and their testimonies formed part of the findings in making a final decision. However, that one of the appellant's witnesses, who witnessed the sale of the disputed property in 2005, one Kondo J. Mkwawa, was heard but there is nowhere in the judgment where his testimony is stated or analyzed and no findings were made based on the testimony he made before the tribunal. That this is contrary to **Regulation 18 of the GN 174 of 2003**.

As regard to the 3<sup>rd</sup> consolidated ground of appeal, Ms. Joram submitted that, site visiting is not a mandatory requirement of the law, it is done at the discretion of the court when it considers it necessary to verify evidence adduced by the parties in order to arrive at a just decision. That the chairman during the trial promised the parties to visit *locus in quo* before entering the judgment but he never visited. Therefore, the failure of the trial Chairman to fulfill his promise made the appellant aggrieved on the decision, henceforth, prayed the court to order retrial before another chairman and new set of assessors.

In reply, Mr. Lugola submitted that, in the appellant's opening remarks of the submission in chief, she stated that it took the trial Tribunal almost 10 years to finalise the case. Moreover, the records disclose that since the commencement of the proceedings the tribunal involved the assessors namely **Mr. Mwiru and Mr. Kinyondo** throughout in the except in the final stage when their tenure to the tribunal had expired. Therefore, the trial chairman acted properly to protect substantial justice.

Mr. Lugola argued that the cited case of **Edina Adam Kibona** (supra), is distinguishable and not applicable to the case at hand. He added that the law specifically the **Land Disputes Courts Act, Cap 216 R. E. 2019 and the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 G.N No. 174 of 2003** is silent on the circumstances on conducting of the proceedings at the time when the assessor's tenure to the tribunal expires. To support his argument, he cited the provision of **Section 45 of the Land Disputes Courts, Chapter 216 R. E. 2019.**

As regard to the second grounds of appeal Mr. Lugola submitted that this ground is baseless and misleading on the reason that the Judgment was short, written in a simple language with the findings that, the appellant unlawfully purchased the suit land from a person who did not have good title to pass. He argued that the appellant also failed to produce any authority such as a power of attorney from the person alleged to have sold the plot proving that the owner (the 1<sup>st</sup> respondent) authorized the sale. That, the appellant faulted the provisions of **Section 61 of the Land Act, Cap.113 R. E. 2019**, as she failed to use the prescribed forms in the alleged disposition of the disputed surveyed land, that is Plot No. 554, Block "E", Kunduchi, Salasala, Kinondoni Municipality, Dar Es Salaam (C.T No. 109779).

As regard to the last ground of appeal Mr. Lugola submitted that, this ground is baseless, on the reason that visiting of the site in dispute is within the discretion of the chairman. On other hand the dispute was not about the boundaries of the plot in dispute but ownership of the surveyed Plot No. 554, Block "E", Kunduchi, Salasala, Kinondoni Municipality, Dar Es Salaam (C.T No. 109779) to which its boundaries are demarcated and defined hence it was not very much necessary or relevant to visit the *lucos in quo*.

Having gone through the parties' submissions and the records of the trial Tribunal the issue for determination is whether the appeal before me has merit.

Submitting on the 1<sup>st</sup> ground of appeal Ms. Joram submitted that the trial Tribunal erred by entering the judgment in the absence of the assessors.

Mr. Lugola replied that it was proper for the interest of justice for the trial chairman to finally determine the case which stayed in court for almost 10 years.

Having perused the records of the trial Tribunal I discovered that it is true that at the preliminary stage of the trial proceedings the coram does not reveal the names of the assessors as they were absent. On the 5<sup>th</sup> September 2015, the date when the matter was scheduled for framing issues and hearing, the assessors (Mr. Mwiru and Mr. Kinyondo) were present. The matter was adjourned up to the 21/9/2015 the assessors were absent and the case was adjourned. On the 12<sup>th</sup> December, 2015 they were present and the matter proceeded on the plaintiff's case. On the 16<sup>th</sup> May, 2016 when the matter was scheduled for defense hearing the assessors were also present. It is from that date to the date of delivering the judgment when the assessors were absent. On the 24<sup>th</sup> January 2018 the coram on the part of the assessors (members) read as "retired". So, it is appropriate to rule out that the assessors partly heard the matter, and later retired when the case was progressing.

I am in agreement with Mr. Lugola's line of argument that the law specifically the **Land Disputes Courts Act, Cap 216 R. E. 2019 and the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 G.N No. 174 of 2003** is silent on the circumstances on conducting of the proceedings at the time when the assessor's tenure to the tribunal expires.

However, **Section 23(3) of the Land Disputes Courts Act (Supra)**, provides that:

***"Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence".***

When the assessors retire or are incapacitated to the extent of failing to proceed with the trial the chairman is allowed to proceed with the case to its finality notwithstanding the absence of the assessor(s).

Again, I am in agreement with Mr. Luoga that the cited case of **Edina Adam Kibona** (supra), is distinguishable and not applicable to the circumstances of the case at hand. In the case of **Adam Kibona (Supra)** the assessors were present but the records did not show if they were given an opportunity to give their opinion as required by the law before making a judgment. In the case at hand the assessors retired before the case was heard to its finality.

On the 2<sup>nd</sup> ground of appeal the appellant submitted that the trial chairman when composing the judgment did not consider the testimonies of the PW2 Kondo Juma Mkwawa. Mr. Lugola replied that the appellant argument is baseless and misleading on the sense that though the trial Tribunal's judgment is short and clear but it considered all testimonies and the tendered exhibits.



The records of the trial Tribunal, particularly the Tribunal's judgment at page 3 reveals that the testimony of the alleged witness, Kondo J. Mkwawa was considered by the chairman in his judgment. Kondo J. Mkwawa testimony did not differ from what had been testified by PW1. On the last ground regarding the site visit (the *locus in quo*) this is as submitted by the appellant, visiting the *locus in quo* is not mandatory, rather it falls within the discretion of the court. Not every case necessitates a visit, if serious caution is not taken, the court may fall into a danger of turning itself into a witness instead of that of an adjudicator. See **Nizar M. H. Ladak vs. Gulamali Fazar Jan Mohamed [1980] T. L. R 29**. Visiting a *locus in quo* aims at resolving any ambiguities in the case including issues of ascertaining the size of the land, the actual location of the disputed land in cases where there is a controversy about the existence and location of a particular feature thereon, or where there is a dispute concerning boundaries of the disputed property.

The case at hand did not necessitate a visit, and its omission did not render the decision unjust. The issue before the trial Tribunal was only on the ownership of the suit land (the surveyed Plot No. 554, Block "E", Kunduchi, Salasala, Kinondoni Municipality, Dar es Salaam C.T No. 109779) between Conradina Undole the person who alleged to purchase the suit land and Julieth Kombe the alleged vendor of the suit property. There was dispute concerning the location, the size or boundaries of the suit land henceforth, it does not attract the court to conduct the site visit. See **Avit Thadeus Massawe vs. Isdory Assega, Civil Appeal No. 6 of 2017**).

In view of the above, the appellant's appeal is without merit. This court has no basis of faulting the judgment and decree of the trial Tribunal. The appeal is accordingly dismissed with costs.

**It is ordered.**

Dated at Dar-es-Salaam this **11<sup>th</sup>** day of **February, 2022.**



  
**T. N. MWENEGOHA**

**JUDGE**