

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 36 OF 2023

(Arising from the Judgment of the Kinondoni District Land and Housing Tribunal in Land Appeal No. 93 of 2021, Originating from the decision of Mabwepande Ward Tribunal in Shauri Na. 0032/2021)

EVERIST SWAI APPELLANT

VERSUS

MARIAMU HASSANI MAGANGA DEFENDANT

JUDGEMENT

Date of Last Order: 22.09.2023

Date of Judgement: 10.10.2023

A. MSAFIRI, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Mabwepande in Application No.0032 of 2021 which was instituted by Mariam Hassan Maganga (the respondent herein) and arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala (herein as DLHT) in Land Appeal No. 93 of 2021.

The parties had a land dispute whereas, the respondent successfully claimed against the appellant to have trespassed into her land. The decision of the Ward Tribunal was in favour of the respondent, *Alls.*

and the same was upheld by the DLHT in Land Appeal No. 93 of 2021 before Hon. R. Mwakibuja Chairman.

Aggrieved with such decision the appellant has knocked the doors of this Court to default the DLHT on its decision on the three grounds of appeal thus;-

- 1. That, the Honourable Chairperson of the District Land and Housing Tribunal for Kinondoni District grossly erred in law and in fact by uphold (sic) the decision of Mabwepande Ward Tribunal which has irregularities, for her failure to give reasons as to why she disagreed with the opinions of the assessors.*
- 2. That, the Honourable Chairperson grossly misdirected herself in upholding the decision of the Ward Tribunal by granting ownership of the suit land to the respondent herein, while at the same time had acknowledge the fact that the Ward Tribunal decision was delivered on the public Holiday in the meaning of Public Holiday Act without giving reasons as to its agency (sic) delivery.*
- 3. That, Honourable Chairperson erred in law and in fact in holding that the Written Laws (Miscellaneous Amendments) No. 3, 2021 which come into force in the 11th October, 2021 been procedural law is of no effects to the to the decision of the Ward Tribunal dated 8th Day of August 2022 Which does not give any right as it was not procured illegally on the Public Holiday.*

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All the time the appellant was represented by Ms A. Assey learned Advocate while the respondent was unrepresented. The disposal of the appeal was by way of written submissions.

Submitting on the appeal, Ms Assey abandoned the 3rd ground and argued the 1st and 2nd grounds of appeal separately. In the 1st ground she said that the assessors had advised for the retrial of the Ward Tribunal proceedings, and that the retrial be held at the DLHT but the Honourable Chairperson of the DLHT differed with his assessors with no reasons given as to why she rejected the given assessors' opinion contrary to Section 24 of Land Dispute Court Act, Cap 216 [R.E. 2019]

On the 2nd ground, Ms Assey argued that the Ward Tribunal decision was delivered on 08.08.2021 which was the Public Holiday without giving any reasons for the urgency, and that the DLHT surprisingly blessed the Ward Tribunal decision on the first appeal.

She prayed that this Honourable Court be pleased to allow the appeal, and set aside the decision of the Kinondoni District Land and Housing Tribunal and that of Mabwepande Ward Tribunal.

In response, the respondent contended that the 1st and 3rd grounds of appeal are new as they were not raised in the first appellate court hence that the same should not be determined by this Court as

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the same were not determined by the first appellate court. To bolster the same, he cited the case of **Godfrey Wilson vs Republic** (Criminal Appeal No. 168 of 2018) [2019] TCA 109. She prayed that the 1st and 3rd grounds of appeal be dismissed.

In addition, the respondent submitted on the 1st ground that, the DLHT Chairperson gave reasons of differing with his assessors in Land Appeal No. 93 of 2021 after a thorough evaluation of the records of the Ward Tribunal. She pointed that besides that, where the reasons are provided, the Chairperson is not bound to follow the opinion of the assessors as provided under Section 24 of Land Dispute Court Act, Cap 216 [R.E. 2019].

On the 2nd ground, the respondent admitted the Ward Tribunal decision was delivered on 08.08.2021 which was a public holiday, but she argued that the appellant failed to establish how her rights were violated by delivering the Judgment on the Public Holiday. She added that, under Section 15 of the Ward Tribunal Act of 1985, the Ward Tribunal is not bound by any rules, hence, that there was no any prejudice to either party.

On rejoinder, the appellant reiterated what was submitted in chief and further added that the 1st and 3rd grounds of appeal were not new *Ally*

grounds since were dealt by the DLHT in the first appeal, and pointed out that the 3rd ground has been withdrawn.

Having gone through the rival submission of the parties, the issue for determination is whether the appeal is meritorious.

Since the 3rd ground was abandoned by the appellant, then the same will not be determined in this appeal. Regarding to the 1st ground of appeal, on the Appellate Chairman failing to give reason for not considering the opinion of assessors, I have read carefully the DLHT records and it is clear that the Appellate Chairperson gave reasons for differing with assessors' opinion at each ground of appeal as it shows at page seven (7) of the DLHT decision on Land Appeal No. 93 of 2021 hence this ground of appeal is misconceived and has no merit.

On the 2nd ground of appeal, that the decision of the Ward Tribunal was delivered on the public holiday, which is on 08.08.2021 (Nane Nane Day), the appellant has failed to establish on how the act prejudiced his right and this point was well addressed by the Appellate Chairperson.

It is the cardinal principle that he who alleges must prove, the reason that the decision was delivered on the public holiday is not in itself fatal but the appellant could have explained as to how the act of *Adls.*

delivering judgment on the public holiday prejudiced his rights compared to if it was delivered during work days.

In this, I find that the appellant failed to discharge his duty of showing how he was prejudiced by the Tribunal's act of delivering its decision on the public holiday.

In the upshot and for the foregoing reasons, I find the entire appeal with no merit, and it is hereby dismissed with costs.

Order accordingly.



A. MSAFIRI

**A. MSAFIRI
JUDGE**

10/10/2023