**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 247 OF 2022**

(Originating from the Judgment and Decree in Land Application No. 251 of 2019 at Temeke District Land Housing Tribunal delivered on 18 December 2021 Hon. P.I Chinyele, Chairman)

**MWARAMI SADIKI MTUMBUKA .....APPELLANT**

**VERSUS**

**ABDULAHMANI SADIKI MTUMBUKA .....1ST RESPONDENT**

**AMINA MUSA KWEJI..... .....2ND RESPONDENT**

**JUDGMENT**

*Date of last Order:21/12/2022*
*Date of Judgment:3/02/2023*

**K. D. MHINA, J.**

This is the first Appeal. It arose from the proceedings commenced in the District Land and Housing Tribunal ("the DLHT") for Temeke, where the Appellant, vide Land Application No. 251 of 2019, sued the Respondents for the ownership of the house located at Dovya Street, Chamazi within Temeke Municipality, registered TMK/CHZ/DVY1895(suit premise) which was he alleged that the house belonged to him and not the matrimonial house owned by the respondents.

A brief factual background of the facts leading to this appeal may be instructive to appreciate the nature of the appeal. According to the

record, the respondents lived as husband and wife, while the appellant was the 1st respondent's brother.

In 2019 vide Matrimonial Cause No. 11 of 2019 at Mbagala Primary Court at Temeke, the 2nd respondent prayed for divorce and division of the suit premise as a matrimonial property against the 2nd respondent. After hearing of the matter, the Primary Court granted a divorce and awarded the 2nd respondent 15% of the value of the suit premise due to her contributions to the house's construction. The Primary Court declared that the suit premises was a matrimonial house as it was registered in the local Government register in the name of the 1st respondent, and the receipt issued by Tanzania Revenue Authority for property tax payment for the year 2017/2018.

Dissatisfied, the 1st respondent appealed to the District Court of Temeke vide Civil Appeal No. 14 of 2019. On 30 August 2019, the District Court dismissed the appeal for want of merits.

After that, the appellant (the brother of the 1st respondent) filed an application at the Tribunal and prayed to be declared as a rightful owner of the suit premise. In his application, he claimed that he allowed the 1st respondent to live in his house (suit premise), and later on, the 1st

respondent welcomed the 2nd respondent, his girlfriend, to live in such a house without his leave.

In the end, though the 1st respondent did not object to the claim, the trial Tribunal dismissed the appellant's claims based on the evidence adduced.

Aggrieved by that decision, the Appellant preferred this Appeal, raising the following four grounds: -

1. *The trial Tribunal determined the application without considering the parties' evidence and establishing who is the legal owner of the land in dispute being the central point which was required for determination;*
2. *The trial Tribunal delivered its decision in contravention with Regulation 20 (a), (b),(c), and (d) of the Land Disputes Courts ( The District Land and Housing Tribunal) Regulations, 2003 without any legal justification for non-complying to it;*

3. *The trial Tribunal erred in law and fact by ignoring the applicant's evidence and that of his witnesses without taking into account that 15% of the land in dispute had to be paid to the 2nd respondent upon proof that the land in dispute belongs to the 1st respondent;*

4. *The trial Tribunal erred in law and fact to act on matters of which it had no jurisdiction as it had already determined by other court.*

This appeal was argued by way of written submissions. Mr. Alex Enock, Advocate, appeared for the appellant, and the respondents appeared in person, unrepresented. But the 2nd respondent submission was filed under legal aid from Legal Assistance and Social Welfare of Tanzania.

On 15 November 2022, when the Court scheduled the timetable of filing the written submissions, both parties were present, and the schedule was as follows;

i. Submission in support of appeal on or before 30 November 2022.
ii. Reply by the respondents on or before 14 December 2022
iii. Rejoinder, if any, on or before 21 December 2022.

Unfortunately, the 1st respondent did file his reply, and the appellant did not file his rejoinder.

Arguing in support of the appeal, Mr. Enock combined the 1st and 3rd grounds of appeal. He stated that the trial tribunal was incorrect in

its findings, as the appellant's evidence and his witnesses, SM1, SM2, SM3, and SM4, being of greater weight to prove the ownership, but the act of not considering it was not exercised judiciously. To substantiate his submission, he cited **Melchades John Mwenda vs. Gizelle Mbaga (Administratrix of the estate of John Japhet Mbaga-deceased) and two others**, Civil Appeal No. 57 of 2017 CAT (unreported). He stated that the Court of Appeal nullified the decision of the High Court, which was arrived at without considering the parties' evidence.

On the second ground of appeal, Mr. Enock stated that the trial Tribunal delivered its decision in contravention of Regulation 20 (a), (b), (c), and (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 without any legal justification for non-complying to it.

He argued that non-analyzing of the historical background or parties' evidence rendered to arrive at the judgment which contravenes the rules of judgment writing as per **Fatuma Idha Salum vs. Khalifa Khamis Said** (2004) TLR 423, **Edwin Isdori Elias vs. Serikali ya Mapinduzi Zanzibar** (2004) TLR 297 and **Hamis Rajab Dibagula**

**vs. Republic** (2004) TLR 181. He added that in the cited cases, the Court insisted on the need for the judgment to contain the summary of the background, a summary of the parties' evidence, the reasoning for accepting or rejecting the evidence, and the decision thereto. He concluded by submitting that the trial tribunal decision being entered in violation of the law rendered the decision nullity.

Regarding the fourth ground, Mr. Enock argued that according to section 3 (2) a, b, c, d, and e of the Land Disputes Courts Act, Cap 216 R: E, the trial tribunal was vested with the jurisdiction to determine the land disputes and established as to who was the legal owner. The act of the Tribunal to determine the application based on the decision of the Mbagala Primary Court was improper.

Further, he submitted that it was not the duty of the trial tribunal to confirm the said decision, but as the primary court directed in its decision, the powers of the Tribunal, as provided by the law, was required to determine based on evidence who was the rightful owner as the primary and district courts are restricted to deal with land matters.

On his part, the 2nd respondent strongly opposed the appeal and replied as hereunder;

In respect of the first and third grounds, she submitted that it is not true that the tribunal did not consider the evidence of the parties. The tribunal determined the application after considering the evidence of the parties. It established who was the owner of the land in dispute, as indicated at pages 8, 9, and 10 of the judgment.

Further, she stated that it was not true that the Tribunal ignored the evidence of the appellant; but the issue is that her evidence was heavier than the appellants to prove that the 1st respondent was the owner of the house. She cited **Hemed Said vs. Mohamed Mbilu** (1984) TLR 113, where it was held that a person whose evidence is heavier than that of the other is the one who must win.

On the second ground, she submitted that the judgment of the trial tribunal did not contravene Regulation 20 (a), (b), (c), and (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.

She further submitted that pages 1 and 2 of the judgment contained the brief statement of the facts, pages 3,4,5,6 and 7 had the summary of the evidence of the parties, page 7 indicated the issues for determination, while pages 7, 8, 9, and 10 contained findings on the issues, decision, and reasons for the decision.

On the fourth ground, she stated that the Tribunal had jurisdiction to determine the matter as the same was not pending or determined by any court of law.

Further, the tribunal considered the judgment of Mbagala Primary Court and Temeke District Court as tendered as evidence of the 2nd respondent because the judgments awarded the 2nd respondent for recovering 15% of which she contributed in the construction of the house owned by the 1st respondent.

Having carefully considered the grounds of appeal, the submissions made by the appellant and the 2nd respondent, and examined the record before me, I find it appropriate to start with grounds no 1 and 3 as consolidated by the parties that the Tribunal did not consider the appellant's evidence and of his witnesses in arriving in its decision.

The entry point is the decision of the Court of appeal in **Andrew Lonjine vs. The Republic**, Criminal Appeal No. 50 of 2019 (Tanzlii), where failure to consider evidence is fatal. Therefore,the issue herein is whether there is a misdirection and/ or misapprehension of proof relating to failure to consider the appellant and his witness's evidence proving his ownership of the disputed premises.

Having gone through the Tribunal proceeding and Judgment, I found that the Trial Tribunal considered the evidence of the appellant and his witnesses. Still, in the end, it was found that the 2nd respondent's evidence was heavier than that of the appellant. At page 8 of the typed judgment, the Trial Chairman analyzed the evidence on record from both the appellant and the respondent.

At pages 8 and 9 of the Judgment, after analysis of the evidence, the Trial Tribunal satisfied that;

One, there were prior matrimonial decisions from the Primary Court of Mbagala and the District Court of Temeke, where the house in dispute was declared a matrimonial property between the 1st and 2nd respondents.

Two, the document tendered by "Afisa Mtendaji wa Mtaa" of Dovya Street indicated that the 1st respondent was registered as the owner of the disputed house by registration no. 1895.

Therefore, I am not persuaded by the appellant's submission that his evidence was not considered. As said earlier, the record indicated that the Tribunal considered the evidence of the appellant and his witnesses. Still, on the balance of probabilities, the evidence of the 2nd respondent and her witnesses was found to be heavier than that of the appellant's side.

Flowing from above, the 1st and 3rd grounds consolidated and argued together by the parties lack merits.

On the second ground of appeal, the gist of the complaint is that the Tribunal's decision in contravention of Regulation 20 (a), (b), (c), and (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 without any legal justification for non-complying to it. That the Trial Tribunal failed to analyze the historical background and parties' evidence

This ground should not detain me long, and the entry point here is the cited regulation which reads;

> *"The Judgment of the tribunal shall always be short, written in simple language, and shall consist of;*
>
> *a. A brief statement of facts*
> *b. Findings on the issues*
> *c. A decision; and*
> *d. Reasons for the decision."*

The same position is stated by the Court of Appeal when quoted Order XX Rule 4 of the CPC in **Tanga Cement Co. Ltd vs. Christopherson Co. Ltd**, Civil Appeal No. 77 of 2002 (unreported) that;

> *"Judgment shall contain a concise statement of the case, The points for determination, the decision thereon, and the Reasons for such decision."*

Having gone through the instant appeal as rightly submitted by the 2nd respondent, the judgment of the Tribunal complied with the requirements of Regulation 20 (a), (b), (c), and (d) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.

The trial tribunal judgment indicated that pages 1 and 2 contained a brief statement of the facts. Pages 3,4,5,6 and 7 had a summary of the evidence of the parties; page 7 contained issues that were framed, while pages 7, 8, 9, and 10 contained findings on the issues, decision, and reasons for the decision. Therefore, the 2nd ground of the appeal also lacks merits.

On the fourth and last ground, the gist of the complaint was that the trial Tribunal erred in law and fact to act on the matters of which it had no jurisdiction as it had already determined by other court.

In the submission to support the ground, the appellant argued that the trial tribunal was vested with the jurisdiction to determine the land disputes and establish who was the legal owner. The act of the Tribunal to determine the application based on the decision of the Mbagala Primary Court was improper.

Therefore, from the above, I gleaned two issues;

**One** is that the Tribunal had no jurisdiction as the matter was already determined by another court.

**Two**, the Tribunal determined the matter based on the decision of the Mbagala Primary Court.

To start with the issue of jurisdiction, the appellant is misconceived by looking at the record of appeal because the issue before the Tribunal was on who was the lawful owner of the suit premises. At the same time, the matter at Mbagala was a matrimonial dispute, and the appellant was not a party to that matrimonial cause. Therefore, the Tribunal had jurisdiction on that matter which was, by the way, filed by the appellant himself.

Further, the trial tribunal, in determining the matter before it, the decision of Mbagala Primary Court on a matrimonial cause between the 1st and 2nd respondents, was part of the 2nd respondent's evidence and exhibit at the trial. Therefore, the decision of the Mbagala Primary Court was part of the evidence and not the whole evidence on which the Tribunal relied or based in deciding the matter before it.

Therefore, flowing from above, the 4th ground of appeal also lacks merits.

In the upshot, the appeal lacks merits as the grounds raised do not carry any weight.

Consequently, the appeal is dismissed for lack of merits with costs.

I order accordingly.

**DATED** at **DAR ES SALAAM** this 3/02/2023.


**K. D. MHINA**

**JUDGE**