

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 216 OF 2019

*(Arising from the decision of the District Land and Housing Tribunal for Kinondoni in
Land Application No. 560 of 2009 (Hon. Lung'wecha, Chairperson))*

**AKIBA COMMERCIAL BANK..... APPELLANT
VERSUS**

MWANAHAWA MRUMA.....RESPONDENT

Date of Judgment 15/12/2020

Date of the last order 08/12/2020

JUDGMENT

I. MAIGE, J

While the respondent is the decree holder in the impugned judgment, the appellant and other three persons who are not parties in this appeal are judgment debtors. In effect the decree under discussion nullified the mortgage and consequential sale of the **suit property** in exercise of the power under mortgage on account that there was no evidence of there being a mortgagee and mortgagor relationship between them. The appellant is aggrieved by the said decision henceforth the instant appeal.

In the memorandum of appeal, the appellant has enumerated five grounds which doubt the correctness of the **trial tribunal** in assessing the evidence.

By the direction of the Court, the appeal was argued by way of written submissions which were presented in due compliance with the court direction.

As I was composing the judgment however I discovered a fatal irregularity which would vitiate the judgment and proceedings of the trial tribunal. The judgment of the **trial tribunal** does not suggest that the chairperson sat with gentle assessors as the law requires. I noted further that the opinions of assessors are not reflected.

On 20th November 2020 which would be the date of judgment, the appellant was represented by Mr. Wasonga, learned advocate. For the reason better known to herself, the respondent was absent. I ordered the parties to appear before me on 8/12/2020 so that they would address me on the issue. Mr. Wasonga for the appellant appeared but the respondent did not. The matter was adjourned to 15th December 2020. Again, while the appellant appeared through Wasonga, learned advocate, the respondent who had been unrepresented in the matter, did not appear. Considering the nature of the issue involved, I allowed Mr. Wasonga to address me on it in the absence of the respondent.

In his brief submissions, Mr. Wasonga informed the Court that, the omission to consider the opinions of assessors is a fatal irregularity which vitiates the judgment and proceedings of the **trial tribunal**. He referred the Court to the authority of the Court of Appeal in **Edina Adam Kibona vs. Absolom Swebe (Shell)**, Civil Appeal No.286 of 2017 where the Court of Appeal was of the view that, omission to consider assessors' opinions by the District Land and Housing Tribunal vitiates the judgment and proceedings thereof. Therefore, Mr. Wasonga advised me, the advice which I entirely accept, to nullify the judgment and proceedings of the **trial tribunal** and order for retrial *denovo*.

I have considered the rival submissions and studied the authority of the Court of Appeal just referred. I am in agreement with Mr. Wasonga that, for the reason of not involving the assessors in its decision, the **trial tribunal** was not properly constituted and the decision there was violative of the mandatory requirement of section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, R.E., 2019.

For that reason, therefore, I am of the view that, the decision and proceedings of the **trial tribunal** were null and void. I therefore, exercise

my power under section 43 of the Land Disputes Courts Act and nullify the same. The file is remitted to the trial tribunal for retrial before another chairperson and new set of assessors. I will not give an order as to costs in the circumstance.

It is so ordered.



I. MAIGE

JUDGE

15/12/2020

Judgment delivered in the presence of Mr. Wasonga for the appellant and in the absence of respondent this 15/12/2020.



I. MAIGE

JUDGE

15/12/2020