

IN THE HIGH COURT OF TANZANIA

AT DODOMA

LAND CASE APPEAL NO. 32 OF 2016

*(From the Decision of the District Land and Housing Tribunal of
Dodoma District at Dodoma in Land Case Application No.93 of
2015)*

JOHN CHIDOLE APPELLANT

VERSUS

1. PAULO MPAGAMA 1st RESPONDENT

2. ASHA MZWANA 2nd RESPONDENT

3. MSAFIRI MELE 3rd RESPONDENT

4. ANDREA CHIBALANGU 4th RESPONDENT

JUDGMENT

Land

17/11/2016 & 23/12/2016

Sehel, J

The present appeal originates from the decision of the District
Land and Housing Tribunal of Dodoma District at Dodoma in Land
Application No. 93 of 2015.

The application at the District Land and Housing Tribunal (the trial Tribunal) was filed by the appellant herein. The appellant sought against the respondents for the following orders; 1. That the applicant to be declared lawful owner of the disputed land; 2. That the respondents to be evicted from the disputed land; 3. Permanent injunction against the respondents from interfering the right of the appellant over the land in dispute; 4. Costs of the application; and 5. Any other relief as deem fit to grant.

Having heard the application, the trial Tribunal dismissed the application with costs. Aggrieved by the decision of the trial Tribunal, the appellant, through the services of Ms. Magreth Mbasha, advocate preferred the present appeal with five grounds.

At the hearing of the appeal, Ms. Mbasha prayed to this Court to be allowed to argue additional ground of appeal regarding non-compliance of Sections 23 and 24 of the Land Disputes Courts Act, Cap. 216 (the Act). The respondents had no objection to such a prayer. Therefore, this Court allowed her to argue the ground.

On this ground, Ms. Mbasha, argued that the Honourable Chairman failed to take the opinion of assessors because the opinions of assessors are not reflected in the judgment. She submitted that this is contrary to Section 23 and 24 of the Act. She said Section 23 (1) establishes the composition of the District Land and Housing Tribunal that it is composed of a chairman; and two assessors. She further said that Sections 23 (2) of the Act and

Regulation 19 (1) of the Regulations require the assessors to give their opinions in writing to the Chairman and the Chairman in terms of Section 24 is required to take into account the opinions of the assessors. Failure to take the opinions she argued vitiates the proceedings and order for retrial should be made.

The respondents being lay persons did not say much on this issue. 1st respondent simply submitted that the assessors did agree with him that he was granted the disputed house by the mother of the appellant. 2nd respondent had nothing to comment on this aspect. 3rd respondent said the allegation is not true. 4th respondent said the dispute was properly heard by the District Land and Housing Tribunal.

It is the law that after the conclusion of the trial and before the Chairman delivered his judgment, the Chairman shall require every assessor to give his opinion in writing (See Regulation 19 (2) of the Regulations). Further, under Section 23 (2) of the Act, the District Land and Housing Tribunal is duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment. Section 24 of the Act, requires the Chairman to take into account the opinion of assessors in his decision but he is not bound by it. However, if he has a contrary view of that of the assessors then the Chairman shall provide reasons for doing so.

In the present matter, the hearing of this case was throughout done by the Chairman and two assessors, namely M. Pahali and M. Mackbel. The only time there was a different


assessor was at mention date. As for the assessors opinions it is on record that there is one opinion of M. Pahali. The opinion of M. Mackbel is not in the trial Tribunal's records. This means that only one assessor gave his opinion. The opinion of M. Pahali reads as follows:-

"kwa kuwa Paulo Mpagama na wenzake wameishi hapo kwa muda mrefu (toka 1998) bila kubughudhiwa au matatizo yeyote hadi 2014 naona ni haki yao kuendelea kuishi hapo, ila eneo la makaburi yasiingiliwe, yabaki kuwa chini ya uangalizi wa familia ya akina John Chidole"

In simple translation, the assessor found Paulo Mpagama and others to have been in a long occupation since 1998 without any disturbances till 2014 therefore he was of the view that it will be just to allow the respondents to continue to occupy part of the disputed land and the grave yards part should be left under observation of John Chidole. However, the Honourable Chairman in his decision found that the 4th respondent and his church are lawful occupier in the portion of land as it was given to them by one Mamba Makachilo. Obviously, the judgment delivered by the Honourable Chairman differs with the opinion of M. Pahali, the assessor and it is evident that the Honourable Chairman did not take into account the opinion of the assessor. The Honourable Chairman found the 4th respondent as the lawful occupier while the assessor found all the respondents lawfully occupy the disputed land. No reason had been given by the Chairman as to why he differed with the assessor's opinion. Failure to comply with

the requirement of Regulation 19 (2) of the Regulations and Section 23 (2) of the Act renders the trial proceedings a nullity (See the case of **Rashid Twalib Makonyora and 2 Others Vs. Salimu Twalib Makonyorwa, Civil Appeal No. 94 of 2016 (Unreported (CAT))**). Since the whole trial proceedings are nullity then it will be futile to consider and hear other grounds of appeal. I proceed to quash the proceedings and set aside the judgment of the District Land and Housing Tribunal for non-compliance with Section 23 and 24 of the Act and Regulation 19 (2) of the Regulations. I consequently order a trial de novo before another Chairman and another set of assessors with no order to costs as the mistake was occasioned by the Tribunal and not by the parties. It is so ordered.

DATED at Dodoma this 23rd day of December, 2016.


B.M.A Sehel

JUDGE

Judgment delivered in open court at Dodoma, under my hand and seal of the court, this 23rd day of December, 2016 in the presence of Ms. Mbasha, learned Counsel for applicant and in presence of 1st, 3rd, and 4th respondents while 2nd respondent is absent. Right of appeal is fully explained.


B.M.A Sehel

JUDGE

23rd December, 2016