

IN THE HIGH COURT OF TANZANIA

DODOMA SUB – REGISTRY

AT DODOMA

LAND APPEAL NO. 78 OF 2023

(Arising from Land Application No. 52 of 2022 in the District Land and Housing Tribunal of Kondoia at Kondoia)

MGENI IBRAHIMU OMARI APPELLANT

VERSUS

MOHAMEDI JUMA HASANI RESPONDENT

RULING

19th March, & 12th April 2024.

MUSOKWA, J.

In the District Land and Housing Tribunal of Kondoia at Kondoia (DLHT), the respondent herein filed and successfully prosecuted Land Application No. 52 of 2022 against the appellant herein. The dispute was in relation to the ownership of five (5) acres of land situated at Dalai Village, Dalai Ward, in the District of Chemba in Dodoma Region. While the appellant claimed that the suit land belonged to her late father namely Ibrahimu Omari Nyati; the respondent claimed that he purchased the suit land from the appellant's father on 11th September 2007, before his demise on 15th March, 2021. Upon full trial at the DLHT, the judgment was entered in favour of the respondent. Being aggrieved, the appellant lodged this



appeal whose grounds I shall not reproduce as the appeal was not heard on merits.

When this appeal came for hearing on 19th March, 2024; the appellant was represented by Ms. Maria Ntui learned advocate, while the respondent appeared in person without legal representation. Prior to commencement of the submissions by the parties on the merits or otherwise of this appeal, the court *suo motu* raised two (2) legal issues that required the comments from both parties. The first issue was on the correctness of the proceedings and judgment of the DLHT, more precisely regarding whether or not the opinion of the assessors was obtained in the proper manner before delivery of the judgment. The second issue was on the *locus standi* of the appellant or parties generally.

Ms. Ntui, advocate for the appellant took the floor and submitted that upon careful perusal of the typed trial proceedings and judgment of the DLHT, she observed that the opinions of the assessors had not been procured in compliance with the requirements of the law. The learned advocate referred to Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal (Regulations) G. N. No. 174 of 2003. The provision, she explained, requires the opinion of the assessors to be issued in writing; further that, the same must form part of the



proceedings. In addition, the law requires that it must be apparent on the records that the opinion of the assessors was obtained before delivery of the judgment. The law also requires the chairman to consider such opinion in the course of writing the judgment. Ms. Ntui prayed the court to refer to page 26 of the typed proceedings of DLHT, pointing out that the records merely state that the opinions of the assessors were read out to the parties; followed by the delivery of the judgment, as recorded on page 27 of the DLHT's typed proceedings. However, the opinion of the assessors is not cited in the proceedings, and their identity remains anonymous.

According to Ms. Ntui, failure by the chairman to reproduce the opinion of each assessor to form part of the proceedings leaves doubt as to whether or not the opinions of the assessors were in fact read out to the parties. The learned advocate for the appellant prayed that in consideration of the apparent and incurable anomalies in the records of the DLHT, the recourse to be taken by this court should be to nullify the proceedings and the corresponding judgment of the DLHT. In concluding her submission, Ms. Ntui prayed that the court be pleased to remit the file to the DLHT and order a re-trial as this, she averred, would serve the interests of justice.

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Ms. Ntui proceeded to address the court on the issue of *locus standi* of the appellant. The learned advocate referred the court to the certificate of mediation, which was issued by the Ward Tribunal of Dalai, dated 10/11/2022. The parties were Mohamedi Juma Hasani as the complainant and Mgeni Ibrahim as the respondent. However, in the Land Application No. 52 of 2022, the parties were Mohamedi Juma Hasani vs. Mgeni Ibrahimu Omari (as the administrator of the estate of the late Ibrahimu Omari Nyati). The same names also appear in the typed proceedings of the DLHT and the corresponding decree. Strangely, the names of the parties that appear on the judgment are Mohamedi Juma Hasani vs Mgeni Ibrahimu Omari.

The advocate for the appellant argued that the numerous variations in the names of the parties on the records, represent different persons in the eyes of the law. In this regard, Ms. Ntui averred that the persons named in the certificate of mediation at the Ward Tribunal are different from those appearing in the Land Application No. 52 of 2022 before the DLHT, the typed proceedings and the decree. Additionally, the names of the parties are not the same persons appearing on the judgment. Ms. Ntui prayed the court to nullify the proceedings including the subsequent judgment, maintaining that this is the most viable legal remedy to rectify



these grave anomalies. Thereafter, she asserted, the respondent herein may institute the matter afresh before the DLHT if he wishes.

The respondent had little to contribute to the issues before the court, being a lay person. Briefly, he beseeched the court to address the procedural irregularities that had been observed, in a manner that would not defeat the interest of justice. Similarly, he was ignorant on the issue *of locus standi* of the parties, thus, he had little to comment on.

Upon hearing the submissions of the parties, the court proceeded to determine the said issues which had the potential to dispose the appeal altogether without entertaining the appeal on merits. In addressing the procedural irregularities at the DLHT, specifically the manner in which the assessors' opinion was obtained and recorded, I will refer to section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216 R.E 2019 which provides for the composition of the DLHT, as follows: -

- (1) *"The District Land and Housing Tribunal established under section 22 shall be composed of **one chairman and not less than two assessors.***
- (2) *The District Land and Housing Tribunal shall be constituted when held by a chairman and **two assessors who shall be required to give out their opinion before the chairman reaches the judgement.**" [emphasis added]*



The procedure for obtaining the opinions of the assessors is stipulated under regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal (Regulations) G. N. No. 174 of 2003, which provides that: -

*"19 (2) Notwithstanding sub-regulation (1), the chairman shall before making his judgment, **require every assessor present at the conclusion of the hearing to give his opinions in writing and the assessors may give his opinions in Kiswahili.**"*
[emphasis added]

The above provision requires assessors to give their opinion before the composition of the judgment by the chairman of the DLHT. In the instant appeal, the records do not show if the assessors gave their opinion as required by the law. However, before assessors were invited to give out their opinion, the chairman of the DLHT fixed a judgement date after closure of the defense case. Page 26 and 27 of the trial tribunal proceedings reads as follows: -

"Baraza: -

Kesi upande wa mlalamikiwa imefungwa

AMRI:

- (i) Wajumbe wa Baraza kutoa maoni, maoni ambayo yatasomwa kwa wahusika /wadaawa tarehe 31/5/2023 saa 3:00 kamili asubuhi.*
- (ii) Hukumu 31/5/2023 saa 5:00 kamili Asubuhi.*



31 Mei, 2023

AKIDI: -

MH.R.S. MANDARI-M/KITI

Y. MSALU }
I. LUBUVA- } *WAJUMBE*

WADAAWA: -

MDAI }
MDAIWA- } *Wote wapo*

KARANI-F. Haule

BARAZA: -

*Maoni toka kwa wajumbe wa Baraza yamesomwa leo tarehe
31 Mwezi Mei, 2023 mbele ya wahusika.*

AMRI: -

Hukumu 31/5/2023 saa 5:45 Asubuhi"

The above proceedings of the DLHT do not show whether the assessors gave their opinion before the chairman, before composing the judgement as required by the law. The reason is that written opinions of assessors are missing in the record of the DLHT. The law is clear that, the opinion given by assessors sitting in the DLHT has to be recorded regardless of



whether the chairman agreed or disagreed with it. Section 24 of the Land Dispute Courts Act, Cap. 216 R.E 2019 provides that: -

"In reaching decisions, the chairman shall take into account the opinion of assessors but shall not to be bound by it, except that the chairman shall in the judgement give reasons for differing with such opinion."

In the case of **Ameir Tubone Mwambeta vs Mbeya City Council**, Civil Appeal No. 287 of 2017 (unreported) the Court of Appeal of Tanzania (CAT) also stated on page 11 that: -

"...Such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the chairman in the final verdict."

On page 12, the CAT stated further that: -

*"...the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the tribunal, it embraces giving their opinion before the determination of the dispute. **As such, their opinion must be on record.**"*
[emphasis added]

Likewise, in the case of **Peter Makuri vs. Michael Magwega**, Civil Appeal No. 107 of 2019 (unreported) at page 7, the CAT observed that: -

"Failing to request, receive, read out parties, and consider the assessors' opinion in the

*tribunal decision as is the case in the instant case, regardless whether the chairman agreed or not with the opinion, is a **fatal omission that goes to the root the matter, consequently vitiating the proceedings.***"
[emphasis added]

Moreover, in the CAT case of **Edna Adam Kibona vs. Absalom Swebe** (Sheli) Civil Appeal No. 286 Of 2017 (unreported) at page 5, it was stated that: -

*"Adverting to the case at hand, when the chairman closed the case for the defence, **he did not require the assessors to give their opinion as required by the law.** On the authorities cited above, **that was fatal irregularity and vitiated the proceedings.**"*
[emphasis added]

Based on the cited authorities above, this appeal suffers the consequences of failure to request and record the opinion of the assessors as required by the law.

Regarding the remaining issue of *locus standi*, I have noted that the names of the parties were interchanged unnecessarily. The records show that the parties who appeared for mediation before the Dalai Ward Tribunal were Mohamedi Juma Hasani as the complainant and Mgeni Ibrahim as the respondent. However, in the DLHT, Land Application No. 52 of 2022, the parties were Mohamedi Juma Hasani vs. Mgeni Ibrahimu

Omari (as the administrator of the estate of the late Ibrahimu Omari Nyati). The same names also appear in the typed proceedings of the DLHT. However, the corresponding decree and the judgment contain the names of Mohamedi Juma Hasani vs Mgeni Ibrahimu Omari.

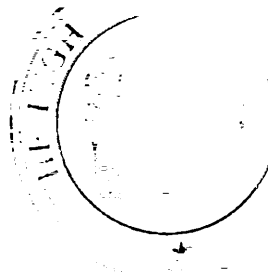
The inconsistency in the names of the parties as they appear in the records implies that the persons referred to are different persons. Ordinarily, the names of the parties who appeared at the Ward Tribunal should have appeared consistently throughout the records of the DLHT. In case of death of a party, an administrator should step into the shoes of the deceased in accordance with the prevailing procedures. Therefore, it is clear that the parties before this court are not the same with those who appeared before the DLHT; and those who initiated the matter at the Ward Tribunal. This is a serious irregularity in law, to say the least.

Accordingly, for reasons stated herein, I quash the proceedings and set aside the decision of the DLHT in Land Application No. 52 of 2022. As correctly suggested by Ms. Ntui learned counsel, I further order the retrial of the case after verification of the proper and competent parties. In addition, the retrial should be presided by another chairman and a new set of assessors. No order as to costs because the appeal is determined based on the grounds raised by this court *suo motu*.



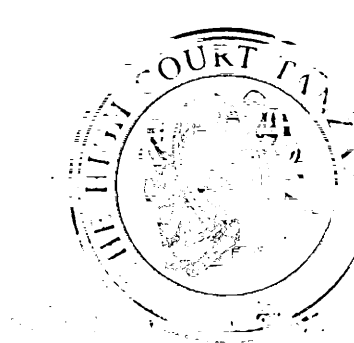
Order accordingly.

DATED at **DODOMA** this 12th day of April, 2024



I.D. Musokwa
I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of the appellant and in the presence of
the respondent.



I.D. Musokwa
I.D. MUSOKWA
JUDGE