

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 37 OF 2022

(C/F Application No. 101 of 2016 in the District Land and Housing Tribunal of Babati
at Babati)

HIITI BALABALA..... APPELLANT

VERSUS

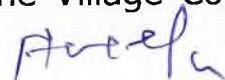
TSIKHO TLATLA..... RESPONDENT

JUDGMENT

12/06/2023 & 04/07/2023

MWASEBA, J.

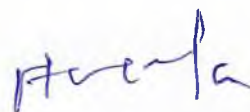
The dispute between the parties herein arose in 2015 after the death of the appellant's brother. At the District Land and Housing Tribunal (herein DLHT), the appellant alleged that in 2000 his brother Mohamed Migire Lehara (the deceased) agreed with the respondent herein to cultivate the disputed land and share the harvests. He averred further that, after the death of his brother on 12/6/2015, the family tried to call the respondent twice for smooth handing over of the disputed land, but he refused. The appellant reported the matter to the Village Council, but



the respondent refused to appear. Thereafter the appellant made an application to the tribunal, where the respondent alleged that he bought the disputed land from the late Mohamed Migire. Having heard both parties, the trial tribunal decided that the disputed land belonged to the respondent herein. Aggrieved by the decision of the tribunal, the appellant is now before this court challenging the decision based on the following grounds:

- 1. That the Honourable Chairman erred in law and fact by failing to evaluate evidence adduced by the Appellant and relied on contradictory evidence of the Respondent in arriving at the wrong decision as to who is the lawful owner of the suit property.*
- 2. That Honourable Chairman who took over to compose a judgement erred in law and fact and failed to state the reasons why he composed the judgment while the matter started the hearing before another chairman.*
- 3. That Honourable Chairman erred in law and facts by relying on the exhibit tendered by the respondent (D1), which was never before the Tribunal after its admission.*

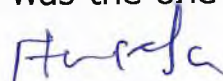
During the hearing of the appeal, Mr. Ngereka Miraji, learned counsel, appeared for the Appellant, whereas Mr. Paschal Peter, learned counsel represented the respondent. With the leave of the court, the appeal was heard by way of written submissions.



Starting with the 1st ground of appeal, Mr. Ngereka prayed for the court to re-evaluate the evidence submitted at the trial court to come up with the correct decision since this is the 1st appellate court. He supported his arguments with the case of **Rashidi Abiki Nguwa vs Ramadhan Hassan Kuteya and Another**, PC Civil Appeal No. 421 of 2020.

Responding to this ground, Mr. Paschal submitted that there is no need for this court to re-evaluate the evidence of the tribunal as prayed by the counsel for the appellant, as the same is very clear that the owner of the disputed land is the respondent herein. Further to that, the documentation evidence submitted at the trial court was never disputed, therefore, this ground is with no merit.

Submitting in support of the 2nd ground of appeal, Mr. Ngereka asserted that the record of the DLHT revealed that the matter was handled by two Chairmen who are H.E Mihava and F. Mdachi. He argued further that while the proceedings were conducted by Mr. Mdachi, Chairman, the judgment was composed by H.E Mwiwaha, Chairman. It was his submission that this was a huge defect as the latter Chairman failed to give the reasons as to why the judgment was not composed by F. Mdachi who conducted the hearing of the case. He was of the view that if the chairman who conducted the hearing was the one who composed

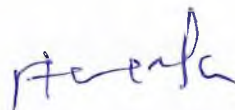


the judgment, he could have analysed the evidence adduced during the trial. Therefore, he prayed that the judgment of the tribunal be quashed and set aside.

Responding to this ground, Mr. Paschal submitted that at the tribunal, both parties agreed for the second Chairman to continue with the hearing of the defence and compose a judgment after considering the evidence of both sides. Therefore, this ground lacks merit.

As for the third ground of appeal, Mr. Ngereka faulted the trial tribunal to rely on exhibit D1 which shows that the land in dispute was sold to the respondent by the family while the respondent alleged that he bought the disputed land from the late Mohamed Migire. He submitted further the said sale agreement had two signatures which supported that it was not worth relying on that agreement. He prayed for the court to re-evaluate the evidence and quash the decision of the trial tribunal.

Replying to this ground, Mr. Paschal, learned counsel for the respondent, submitted that the respondent proved before the tribunal that he bought the disputed land via Exhibit D1 and D2 for the five acres in dispute. He prayed for this ground to be dismissed for want of merit. They prayed for the decision of the tribunal to be upheld and the appeal to be dismissed for want of merit.



Having carefully considered the rival arguments advanced by the learned counsels for the parties and after having examined the record of appeal, the main issue to be determined by this court is whether the appeal is meritorious or not.

Starting with the 2nd ground of appeal, Mr. Ngereka learned counsel for the appellant complained that there was a change of Chairpersons without assigning any reasons as required by the law. On his side, Mr. Paschal learned counsel for the respondent submitted that all parties agreed on the presiding Chairman to proceed with the hearing of the defence and to compose a judgment.

When it comes to the change of hands of the adjudicators, the law is very clear. **Order XVIII, Rule 10(1) of the Civil Procedure Code**, Cap. 33 R.E. 2019, which also binds the District Land and Housing Tribunal provides that:

"Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it."

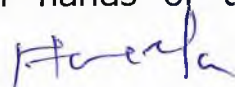


The quoted provisions herein were emphasized in various cases, including the case of **Kinondoni Municipal Council vs Q Consult Limited**, Civil Appeal No. 70 of 2016, quoting with approval the case of **M/S Georges Centre Limited vs The Honourable Attorney General and Another**, Civil Appeal No. 29 of 2016 (unreported), where the Court of Appeal of Tanzania held that:

*"The general premise that can be gathered from the above provision is that once the trial of a case has begun before one judicial officer, that judicial officer has to bring it to completion unless, for some reason, he/she is unable to do that. **The provision cited above imposes upon a successor judge or magistrate an obligation to put on record why he/she has to take up a case that is partly heard by another.**" (Emphasis added)*

See also the case of **Mariam Samburo vs Masoud Mohamed Joshi and two others**, Civil Appeal No. 109 of 2016 (CAT- Unreported) and **Charles Chama and Others vs Regional Manager TRA and Others**, Civil Appeal No. 224 of 2018 (CAT-Unreported).

Basing on the cited provision and the case laws, it is crystal clear that whenever it comes to change of adjudicators, the successor adjudicator must assign reasons. In the case at hand the records reveal that no reasons were disclosed for the change of hands of the presiding



chairman who received the evidence and the one who composed judgment. The record shows that the judgment was composed and delivered by Hon. Chairman Mwiwaha after hearing the assessor's opinion while the hearing of the witnesses was conducted by Hon. Mdachi. The successor did not assign any reason as to why he took over to compose the judgment instead of Hon. Mdachi who conducted the hearing of the case.

It should be noted that the trial tribunal enjoys the right to see the demeanour of the witnesses and assess whether or not the witnesses are credible. Although a change of chairman may be inevitable for some reasons, such reasons must be disclosed for the purposes of the integrity of the records of the tribunal and to enable the successor chairman to properly assume jurisdiction of continuing with the trial. See the case of **Leticia Mwombeki vs Faraja Safarali and others**, Civil Appeal No. 133 of 2019, Court of Appeal, Dar es salaam. Thus, the said irregularity is fatal and contravenes the requirement of the law as elaborated herein above. Therefore, the 2nd ground has merit. As the 2nd ground suffices to dispose of the appeal, the court will not determine the remaining grounds.

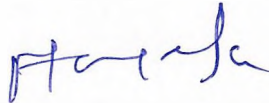


In the light of the foregoing, the appeal is hereby allowed. I therefore nullify the proceedings from the successor chairman from 10th January, 2022 and the resulting judgment and subsequent orders. The case file be remitted to the trial tribunal for continuation of the trial in compliance with the **Order XVIII Rule 10 (1) of the Civil Procedure Code.**

It is so ordered.

DATED at **ARUSHA** this 4th day of July, 2023.




N.R. MWASEBA

JUDGE