IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND CASE APPEAL NO. 28 OF 2019

(Arising from Land Case No. 19 of 2018 in the District land and Housing Tribunal for Iramba at Kiomboi)

MWANDOIGEMBE VILLAGE COUNCIL ..... APPELLANT

VERSUS

SELEMANI ALLY MGUSI .....RESPONDENT

13/10/2020 & 10/11/2020

JUDGMENT

MASAJU, J

The Respondent, Seleman Ally Mgusi, successfully sued the Appellant, Mwandoigembe village Council through Land Application No. 191 of 2018 in the District Land and Housing Tribunal for Iramba at Kiomboi. Aggrieved with the decision, the Appellant came to the Court by way of an appeal. The Appellant's Memorandum of Appeal bears five (5) grounds of Appeal, one of them being, thus;

"1. That, the Chairman erred in law and in fact by failing to consider the preliminary objection which was raised by the

Appellant against the Respondent and consequently failed to determine the actual size of the land in dispute which resulted to the wrong determination of the size of the land in the Judgment."

The Appellant prayed the Court to allow the appeal with costs. At the hearing of the appeal both parties were represented, the Appellant was represented by Mr. Camilius Ruhinda, the learned Solicitor, Iramba District council while the Respondent was in service of Mr. Emmanuel Charles, advocate.

The learned Solicitor for the Appellant prayed to adopt the Petition of Appeal to from part of his submissions in support of the Appeal in the Court. He added that the Decree does not conform to the judgment. That, the Respondent had claimed 45 acres of land but in the Decree the Respondent was given the 35 acres of land whilst the judgment reads 45 acres of land. The Appellant prayed the Court to allow the appeal with costs.

On his part, the Respondent contested the appeal and prayed to adopt his Reply to the Memorandum of Appeal to form part of the submissions against the appeal. The Respondent added that the Appellant deprived the Respondent of his land without following procedural injuctions provided for under the Village Land Act, [Cap 114] sections 12 to 28 thereof.

In Rejoinder, the learned solicitor maintained his submissions in chief and added that, the procedure for acquisition of the suitland was complied with by the Appellant.

That is what was shared by the parties in the Court. The Court will not determine the merit of the appeal since there seems to be an irregularity on the record of proceedings of the trial Tribunal. Regulation 19 (2) of the land Disputes Courts (the District Land and Housing Tribunal) Regulation provides, thus;

> *"19 (2) Notwithstanding sub regulation (1) the Chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give opinion in writing and the assessors may give his opinion in Kiswahili."*

In the instant case, the trial Tribunal's record of proceedings does not reveal if really the assessors' opinion were given at the time of conclusion of hearing of the Application prior to setting an order for the date of Judgment though the Assessors' written opinion dated the 5 and 14th days of November, 2018 respectively form part on the record of the trial tribunal.

The case of **Tabora Mwambeta V. Mbeya City Council, (CAT) Civil Appeal No. 287 of 2017,** it was decided

> *"..... since Regulation 19 (2) of the Regulation requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, 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."

The hearing of the disputed in the trial tribunal was concluded on the 29th day of October, 2018. However, it is not known how and when the Assessors' written opinion were made part of record of the trial tribunal.

Thus, the Court finds an irregularity in the trial Tribunal's pronouncement of its decision since the assessors' opinion were not read in presence of the parties in compliance with the mandatory requirement of the law.

That said, the Court invokes its revisionary powers by virtue of section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216] to nullify the trial and quash the judgment, orders and Decree given by the trial Tribunal. The said orders and its record of proceedings, the judgment and Decree thereof are hereby so nullified and quashed. There shall be trial *de novo* of the dispute in the trial tribunal before another Chairman with a different set of Assessors if the parties do not reach an amicable settlement of the dispute between themselves. In the event of trial *de novo* there should be compliance with sections 23 and 24 of the Land of the Land Disputes Courts Act, [Cap 216] read together with Regulation 19 (2) of the Land (the District Land and Housing Tribunals) Regulations 2003 accordingly.

At the conclusion of the trial, the trial Chairman shall ask the Assessors to give their written, signed and dated opinion in the presence of

the parties pursuant to Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunals) Regulations, 2003. The said written opinion by the Assessors shall be read over in the presence of the parties and then be made part of the original record of the trial Tribunal prior to the trial Chairman's giving the order as to when the judgment will be delivered. The parties shall bear their own costs.

GEORGE M. MASAJU

JUDGE

10/11/2020