

TANZANIA / JUDGMENT

cheche olonyoke

COURT
TANZLII

DECIDED
6 November 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI LAND APPEAL NO. 13154 OF 2024 (Originating from Land Application No.
5 of 2021, District Land and Housing Tribunal for Simanjiro at Orkesumet) CHECHEE OLONYOKE
(PAUL)..... APPELLANT VERSUS SANANGA
BERET.....1st RESPONDENT SAMBURI
SANANGA..... 2nd RESPONDENT PASHLET
SANANGA..... 3rd RESPONDENT KISHLETI
LESKARI..... 4TM RESPONDENT

JUDGMENT

19th September & 6th November, 2024 KAMUZORA, J. Before the District Land and Housing Tribunal for Simanjiro (hereinafter referred to as the trial tribunal), the appellant sued the respondents for recovery of piece of land measuring 50 acres situated at Sukuro village within Simanjiro district (hereinafter referred to as the suit land). According to the appellant, he was allocated the suit land by Sukuro village council sometimes in 1997. The appellant claimed that he occupied and utilized the suit land for more than 20 years until 2018 when the 1st Page 1 of 14 respondent trespassed into the suit land. The appellant claimed that the matter was reported at Komolo ward executive office in which parties were requested to submit ownership documents. That, after submission of the documents, the appellant was considered as lawful owner of the suit land but in 2019, the respondents trespassed into the suit land. In their joint written statement of defence, the respondents disputed the appellant's claims and alleged that the suit land is part of 300 acres owned by the 1st respondent. They claimed that the 1st respondent was allocated 300 acres of land in 1989 by Sukuro village council and in 1997, he was issued with a customary right of occupancy by Sukuro village council. The 1st respondent alleged further that he has been in occupation of his 300 acres of land for over 30 years and in 2016, a conflict arose between him and Ndimana Olonyokie but was amicably resolved. That, in 2018, another conflict arose between him and the appellant and the boundaries of the suit land were set. After hearing the parties, the trial tribunal decided in favour of the 1st respondent as lawful owner of the suit land. The appellant was adjudged a trespasser on the suit land hence, ordered to vacate. The decision of the trial tribunal irked the appellant who has preferred the instant appeal on three grounds of appeal which can be conveniently reduced into two grounds as follows; Page 2 of 14

1. That, the trial tribunal erred for holding that the appellant's evidence was insufficient to prove his ownership over the suit land.
2. That, the trial tribunal did not record the opinion of assessors in terms of Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations 2003. The appellant was represented by Ms. Frida Magesa, learned advocate while the respondents were represented by Mr. Benjamin Tenga, learned advocate. In her submission in support of the 1st ground of appeal, Ms. Magesa submitted that, the evidence before the trial tribunal proved appellant's ownership over the suit land. That, while exhibit P4 proves that the appellant was allocated 50 acres of land on 10/07/1997, the 1st respondent tendered exhibit D2 which shows he was allocated 300 acres on 02/08/1997. She argued that exhibit P4 was issued prior to exhibit D2 proving that the appellant was the first to be allocated the suit land. The counsel for the appellant faulted the trial tribunal for holding that the appellant's evidence was insufficient to prove his ownership of the suit land. She argued that, the learned trial chairperson erred for considering only letters dated 29/11/2018 and 30/11/2018 and disregarding allocation document. She was of the view that, since the Page 3 of 14 appellant was allocated with the suit land first, then, by priority principle the same could not be allocated to the 1st respondent. To buttress her argument, she referred the case *Ombeni Kimaro vs Joseph Mishili t/a Catholic Sharismatic Renewal*, Civil Appeal No. 33 of 2017 Court of Appeal of Tanzania at Dar es Salaam (unreported). In her submission on the 2nd ground of appeal, the learned advocate submitted that, the opinion of assessors was not properly recorded as required by Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations 2003 (hereinafter referred to as the Regulations). She argued that, the opinion of assessors must be recorded regardless of whether the chairman agrees or disagrees. To buttress her argument, she referred the decision of this court in the case of *Shanta Mining Company Ltd vs Gabriel Issa Nyambi* Land Appeal No. 63 of 2022. She urged this court to allow the appeal and the whole decision of the trial tribunal be quashed and set aside. In reply, the learned advocate for the respondents submitted that the learned trial chairperson properly analyzed and evaluated the evidence adduced and the findings were correct. He argued that, the suit land is the village land and its allocation is governed by the Village Land Act [Cap 114 R.E 2019], (hereinafter referred to as the VLA). That, in terms of section 8(5) of the VLA, allocation of village land by the village Page 4 of 14 council has to be approved by the village assembly. He contended that, exhibit P4 which was purported to have been issued by Sukuro village council was not approved by the village assembly as the minutes of the village assembly were not tendered to signify that the village council allocated the suit land to the appellant. The respondents' counsel was of the view that, the respondents proved ownership of the suit land for the minutes of Sukuro village assembly, exhibit D1 and handing over document which was admitted as exhibit D2 proved ownership to the respondents. He added that, it is settled law that, in civil case the standard of proof is on balance of probability but the evidence adduced by the appellant was insufficient to prove ownership of the suit land. On further submission, the learned advocate for the respondents argued that, even if the appellant who was issued ownership document before

the respondent, still the said document could not prove ownership of the suit land without the minutes of Sukuro village assembly. He therefore maintained that, the learned trial chairperson analyzed the evidence properly. In his reply to the 2nd ground of appeal, the learned advocate for the respondents submitted that the record are clear that, the trial chairperson sat with two assessors and at the end of the trial, the Page 5 of 14 assessors gave their opinion as vividly seen at page 52 of the typed proceedings. That, the assessors' opinion was also read over to the parties and considered by the learned trial chairperson in his judgment as seen at page 6 of the judgment. He maintained that the learned trial chairperson complied with the requirement of Regulation 19(2) of the Regulations. He was of the view that, the case referred by the learned advocate for the appellant in *Shanta Mining Company Ltd vs Gabriel Issa Nyambi (supra)* is distinguishable from the circumstance of the case at hand because in *Shanta's* case, assessors were not involved during the trial but in the matter at hand, the assessors were involved and their opinion read in the presence of the parties and considered in the judgment. He therefore prayed for the dismissal of the appeal with costs. In rejoinder the learned advocate for the appellant essentially reiterated her submission in chief. I have gone through the parties' rival submissions and the record of the trial tribunal. I will start with the 2nd ground as it raises complaint on procedural irregularity. It was argued that the assessors' opinion was not recorded in the proceedings by the trial chairperson and such omission was in total violation of Regulation 19 (2) of the Regulations. It is the requirement of the law under section 23(1) of the Land Disputes Courts Act [Cap 216 R.E 2019], (hereinafter referred to as the LDCA), that the Page 6 of 14 district land and housing tribunal must be composed by the chairman and at least two assessors. At the conclusion of the trial the assessors must give their opinion as required by section 23(2) of the LDCA. The manner and form in which the assessors are required to give their opinion is stipulated under Regulation 19(2) of the Regulations. It reads as follows; "Notwithstanding sub-regulation (1) the chairman shall, before making his judgement, require every assessor present at the conclusion o f hearing to give his opinion in writing and the assessor may give his opinion in Kiswahiii" The above provision requires the assessors present their opinion in writing. The above provision has been interpreted in numerous decisions both of this court and the Court of Appeal to insist that, assessors' opinion opinion must be in writing, must be read to the parties and the chairperson must consider such opinion in making decision although not bound by such opinion. See, the case of *Tubone Mwambeta v Mbeya City Council*, Civil Appeal No. 287 of 2017 cited in *Edina Adam Kibona v Absolom Swebe (Sheli)*, Civil Appeal No. 286 of 2017 and *Emmanuel Oshoseni Munuo v Ndemaeli Rumishaeli Massawe*, Civil Appeal No. 272 of 2018 Court of Appeal of Tanzania at Arusha (both unreported). Page 7 of 14 In the matter at hand, there is no dispute that assessors were involved but the complaint is that, their opinion was not recorded in the proceedings. I have gone through the record of the trial tribunal and found that, two assessors gave their opinion in writing as captured on the proceedings dated 15/04/2024 and their opinion was read in the presence of the appellant and his advocate. Page 8 and 9 of the typed judgment shows that, the learned trial chairperson considered the assessors' opinion. In my view, the trial tribunal complied with the legal requirement the

law does not impose a requirement of the chairman to re-write the assessors' opinion. I agree with the respondents' counsel that the case of Shanta Mining Company Ltd vs Gabriel Issa Nyambi (supra) cited by the counsel for the appellant is distinguishable because in that case, the assessors never gave their opinion and the record was silent as to whether such opinion was read to the parties. That is contrary to the matter at hand where the assessors not only gave their opinion in writing, the same was read in the presence of the parties and it was considered by the learned trial chairperson in his decision. I therefore find the 2nd ground of appeal lacking in merits and it is dismissed. Turning to the 1st ground of appeal, it essentially challenges the tribunal for failure to properly consider the appellant's evidence. Going through the tribunal's judgment I realised that in his decision, the learned Page 8 of 14 trial chairperson considered exhibit D2 which was in favour of the 1st respondent in concluding that he was the lawful owner of the suit land but, did not say anything regarding exhibit P4 which was a document intended to establish that the appellant was the owner of 50 acres. I therefore agree that there was no proper assessment of the appellant's evidence. Since this court is sitting as the 1st appellate court, I undertake to re-evaluate the evidence in totality and make my own findings. It is on record that, the appellant claimed to have been allocated a piece of land measuring 50 acres. He tendered exhibit P4 which is the land allocation document showing that he was allocated 50 acres by Sukuro village on 6/7/1997 and the same was handed to him on 10/07/1997. His evidence was supported by SMI who by then, was the hamlet chairperson. He testified that he was among the members of the land allocation committee and supported the fact that, the appellant was allocated 50 acres. SM2 claimed to be neighbour and testified that the appellant was allocated 50 acres of land in 1997. He explained that, he and the appellant applied to be allocated land together thus, he knows that the suit land belonged to the appellant. There is also the evidence of SM4 (the ward executive officer) who testified that, his office received the complaint between the appellant and the respondents. That, they visited Page 9 of 14 the suit land and convened a meeting with the neighbors and it was resolved that the suit land belonged to the appellant. On the other hand, the 1st respondent narrated that, he was allocated 300 acres of land by Sukuro village and the appellant trespassed into 50 acres. It is on record that the 2nd and 3rd respondents are the 1st respondent's sons while the 4th respondent is the grandson to the 1st respondent. They both claimed to have no interest over the suit land for they claimed that the same belongs to the 1st respondent. In its decision, the trial tribunal was satisfied that, the evidence adduced by the 1st respondent was heavier than that of the appellant on the strength of exhibits D1 and D2 and oral account of SU3 and SU4. Exhibit D2 is the document showing that the 1st respondent was allocated 300 acres by Sukuro village and exhibit P4 is the document showing that the appellant was also allocated land measuring 50 acres by the same village. Both exhibits P4 and D2 show that they were issued on the same date on 6/7/1997 and signed by the same village chairman and village executive officer. The difference is on the size of the land allocated to each party, the date of handing over of the land and committee members involved. In exhibit P4 the appellant was allocated 50 acres while in exhibit D2 the ^respondent was allocated a piece of land of 300 acres. According to exhibit D2, the 1st respondent was handed his piece of land on 2/8/1997 Page 10 of 14 while

exhibit P4 the appellant was handed over his piece of land on 10/7/1997. The respondents testified that 50 acres claimed by the appellant is part of 300 acres which were allocated to the 1st respondent. In their pleadings, both parties claimed that they were allocated the land by Sukuro village. Each of the parties were challenging the validity of the ownership document issued to the adverse party. Since the dispute evolves over the land allocation by the village council, I noted that the said village was not involved in the trial of the case. This prompted this court to raise suo motu a question to the learned counsel of the parties who were engaged to address on that infraction. Expounding on the question raised by the court, Ms. Frida Magesa, counsel for the appellant submitted that the documents were allegedly issued by the same village thus, their legality cannot be discussed without according the village leader an opportunity to explain on the legality of the documents. She was of the view that, it was important for the village leaders to be heard. She however contended that, there was contradiction in the respondents' defence which could be considered in favour of the appellant. On his part, Mr. Benjamin Tenga submitted that the respondents' evidence was supported with two documents including minutes of the village council proving that he was owner as opposed to the appellant who had no Page 11 of 14 minutes. He however agreed that village leaders were in a better position to explain the legality of the documents issued. From their submissions, both counsel were in agreement that it was not proper not to hear the village leaders who were responsible for land allocation. The counsel address to this court suggest that they were in concession that Sukuro village ought to have been joined as party to the case for it to furnish evidence on existence of any valid allocation of land to the parties. In my view, the aforesaid raises the question of non-joinder of a necessary party and the issue is on the propriety of the trial before the tribunal on account of non-joinder of the village leaders. In considering the pleadings, the evidence before the trial tribunal and submissions before this court, I find that, the conclusive and fair determination of the dispute between the parties cannot be attained without impleading and hearing the village leaders on village record relating to allocation of land to the parties. Thus, Sukuro village was a necessary party to be joined to the case subject to Order 1 Rule 10 (2) of the Civil Procedure Code, [Cap 33 R.E 2019]. Having said so, the question is what is the remedy available where a necessary party is not joined. In Civil Appeal No. 254 Of 2019, Nestory Msoffe and 5 others Vs the Registered Trustees of Catholic Page 12 of 14 Archdiocese of Arusha, the Court of Appeal was faced with a situation where the dispute related to the title issued by registrar of titles but the registrar was not joined as a party to the case. The court held that; "Since it is dear that the Registrar of Titles had a role in the registration of the land in question, the non-joinder of her in the suit before the High Court it means that the Registrar was not heard which occasioned a miscarriage of justice which cannot be condoned by the Court by hearing and determining the present appeal. In the result, we have no option but to annul the trial proceedings and the impugned judgment" See also the Court of Appeal decision in Nuta Press Limited v. Mac Holdings and Another, Civil Appeal No. 80 of 2016 which was also referred in the above case. In the matter at hand, both parties claimed ownership based on village allocation and they both tendered allocation documents allegedly issued by the same village. I agree with the counsel for the parties that the village

leaders were in a better position to give detailed village record on the allocation. That could be properly done upon including the village as a party to the suit to clear such ambiguity and assist in a conclusive determination of the dispute. Page 13 of 14 In that regard, I hereby quash the proceedings, judgment and decree of the trial tribunal. Whoever wishes, may institute a fresh suit joining the village allegedly allocated land to the parties in the court with competent jurisdiction. The appeal is therefore allowed to the extent above explained. In the circumstance, I will not make an order as to costs. DATED at BABATI this 6th day of November, 2024. Page 14 of 14

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/323216/source_file/5ac931f01fede0e5/cheche_olonyoke.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/chechee-olonyoke-paul-Landallocation-tanzlii-2024--6a3ea5243b1caa9129819e7f

Prepared on 13 October 2026 · Esheria