

TANZANIA / JUDGMENT

20161114 TZHC Dodoma

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TZHCDECIDED
14 November 2016

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IN THE HIGH COURT OF- TANZANIA AT DODOMA [f t- f LAND APPEAL NO. 6 OF 2016 f f- (From the Decision of the District Land and Housing Tribunal of f::: Dodoma District at Dodoma in Land.Case No.8 of 2013)

1. GODFREY HAROLD MSAGACH UMA1 st APPELLANT rr·
 2. ~GLA HAROLD MSAGACHUMA :... 2 nd APPELLANT · .. .3. EZELEDA-HAROLD MS.AGACHUMA .. : 3 rd APPELLANT ·
 4. MEtEA HARQ:IJ.I MSAGACHUMA .. ·:..... . 4th APPELLANT
 5. MESHA.K! HAROLD MSAGACHUMA 5th APP.ELLANT
 6. CHARLES HAROLD MSAGACHUMA,, - 6th APPELLANT VERSUS . BENITOD D. MWAKITOSI RESPONDENT JUDGMENT f
- 'I r 03/11/2016 & 14/11/2016 SeheL J. . . The present appeal originates from the decision of the District Land and Housing Tribunal of Dodoma District at Dodoma ·in Lan~ Case No. 08 of 201 ~ 1 ,. The ·op.plication· at the District Land c;;md Housing Tribunal was filed by the respondent. The respondent· sought agafnst the . ' appellants for the following orders; 1. That the! respondent . to be declared lawful owner of the di°sputed land; 2.: That the appellants to be evicted from. the land in dispute forthwith and hand over the same to the respondent; 3. Demolition order; 4. Permanent ·injunction against the appellants; and 5. Costs of the_ suit. . Having heard the application, the .friol .. Tribunal,' amongst other things, decl_ared the respondent as the :lawful owner of the . . five acres land in dispute. Aggri"eved by the ;decision of .the trial ! - . ' Tribuhal, the appellants, through the servi:c:es· of· Kidumage & Associates (Advocates), ·preferred the present appe9I with seven · grounds. At the hearing of the- appeal, this Court· invited parties to . . address it on ·ground number six raised by the appellants for simple reason that will be revealed. herein. ML Kidumage, learned counsel from Kidumc:ige & Associates (Advocates) argued that . . . the Honourable Chairman failed to take the opinion of assessors because the decision reflects so. He therefore contended that such a failure rendered the whole proceedings to be a nullity: In support of his submission,· he cited the c_ase of Rashid Twalib . . Makonyora and 2 Others Vs. Salimu Twalib Makonyorwa, ·Civil . . Appeal No. 94 of 2016 (Unreported (CAT)). Ms. Maniche, learned advocate representing the ' . respondent replied that- at page 5 of the

judgment that reads: "I therefore join hands with Assessors and the judgment is hereby entered as follows ... " proves that the Honourable Chairman did take into account the opinion of assessors. She therefore prayed for the appeal to be dismissed with costs and the decision given by the District Land and Housing Tribunal be upheld. Counsel Kidumage rejoined by stating that the words "I therefore join hands with assessors .. " do not comply with the law since the Honourable Chairman .. , ought to have stated the assessors' opinions in his decision. He said it is important to state them because the opinions are given in writing and they are only accessible by the Honourable Chairman. He said the failure to incorporate the Of?ir,iio17s, denied parties their right to know assessors' opinions. It is the law that after the conclusion of the trial and before the Chairman delivers his judgment, the Chairman shall require every assessor to give his opinion in writing. (See Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 (the Regulations)). Further, 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 23 (2) of the Land Disputes Courts Act, Cap. 216 (the Act)). Under Section 24 of the Act, the Chairman is required 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, on page 5 of the decision the Honourable Chairman stated "I therefore join hands with 11 assessors .. Ms. Maniche argued that this proves the Honourable Chairman took into account the opinion of assessors. Mr. Kidumage is on the contrary view. He said since the opinions are only accessible by the Honourable Chairman then he is required to include the opinion of assessors in his judgment of which I fully concur with him. I have gone through the trial Tribunal's record .. and found that the hearing of this case was throughout with Chairman and two assessors, namely P. 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 P. Pahali. The opinion of Mr. Mockbel is not in the trial Tribunal's records. This means that only one assessor gave his opinion. Therefore, the statement made by the Honourable Chairman in his decision that "I therefore join hands with assessors .. " does not hold any truth and it is contrary to Section 23 (2) of the Act and Regulation 19 (2) of the Regulations. 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 (Supra)). Since the whole trial proceedings are nullity then it will be futile to consider and hear other grounds of appeal. I therefore quash the proceedings and

- set aside the judgment of the District Land and Housing Tribunal for non-compliance with Regulation 19 (2) of the Regulations and Section 23 (2) of the Act. I consequently order a trial de novo before another Chairman and another set of assessors with no order as to costs as the mistake was occasioned by the Tribunal and not by the parties. It is so

ordered. . . DATED at Dodoma this 14th day of November, 2016. II- , I c f~ ' .. JUDGE t
Judgroent delivered. in open and seal of the court this 14th day of November, 2016 in t ~
presence of Ms. Maniche, learned Counsel .for respondent a j· holding brief · for Mr:
Kidumage, learned advocate for t e appellants. · ,1(;:::2·_·. "·.:, { ~_~t~:\~·-. JUDGE
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