

TANZANIA / JUDGMENT

JUMA RAJABU 222 Edited

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI LAND APPEAL NO. 9467 OF 2024 (Originating from Land Application No.
18 of 2021, District Land and Housing Tribunal for Babati) JUMA
RAJABU.....1st APPELLANT IDDI
RAJABU..... 2nd APPELLANT VERSUS JUMANNE
RAMADHANI..... RESPONDENT

JUDGMENT

17th July & 19th September 2024 KAMUZORA, J. Before the District Land and Housing Tribunal for Babati (hereinafter referred to as the trial tribunal), the Respondent sued the Appellants for recovery of a piece of land measuring about 4 acres situated at Boay village, Boay ward within Babati district in Manyara region (hereinafter referred to as the suit land). According to the Respondent, he acquired the suit land from his late father namely Athumani Mafeta in 1967 who acquired the suit land in exchange of a cow. Page 1 of 8 The Respondent claimed that in 2006 the Appellants invaded the suit land claiming it to be their property. The Respondent therefore filed a suit before the district land and housing tribunal and he was adjudged the lawful owner of the suit land. That, the 1st Appellant later filed a fresh suit before the ward tribunal and the matter ended in his favour. The Respondent unsuccessfully appealed against such decision before the district land and housing tribunal but he later on successfully appealed against such decision before the High Court (Arusha sub-registry). The Respondent alleged that the Appellants caused damage on the suit land as they plucked off 90 banana stems as well as four big trees. The Appellants filed joint written statement of defence in which they disputed the Respondent's claim. They maintained that the late Athumani Mafeta had never owned or occupied the suit land. After hearing the parties, the trial tribunal decided in favour of the Respondent and declared him the lawful owner of the suit land. The Appellants were displeased with the trial tribunal's decision hence they preferred the instant appeal with three grounds of appeal as follows;

1. That, the district land and housing tribunal erred in law and fact for deciding in fa vour of the Respondent basing on weak, contradictory and cooked evidence as against the strong and viable evidence by the Appellants. Page 2 of 8

2. That, the district land and housing tribunal erred in law and fact for failure to visit the locus in quo despite having scheduled for the same.
3. That, the district land and housing tribunal's decision is tainted with procedural irregularities, change of chairmen and assessors occasionally without assigning

reasons.

When the appeal was called for hearing, both parties appeared in person unrepresented. The appeal was argued orally. In his submission in support of the appeal, the 1st Appellant argued generally that, parties duly paid costs for fuel for site visit but the learned trial chairperson did not visit and instead, he proceeded on delivering the judgment. He argued that, he acquired the suit land from his late father when he was still alive. That, the Respondent's evidence was cooked because the Respondent's witnesses are not residents of that area. He insisted that the 2nd Appellant was not a party to the case before and the suit land belongs to him (the 1st Appellant) and not the 2nd Appellant. That, he has been cultivating the suit land since 1970's thus this court be pleased to visit of the locus in quo and declare him the lawful owner of the suit land. On his part, the 2nd Appellant faulted the trial tribunal for not visiting the locus in quo despite the fact that trial tribunal fixed the matter three Page 3 of 8 times for visiting the locus in quo. He added that the witness who testified for the Respondent is not a neighbor to the suit land. He supported the 1st Appellant's submission that the suit land belongs to the 1st Appellant as he was allocated the same by their late father many years back. In reply, the Respondent submitted that they paid for the fuel costs in order for the trial tribunal to visit the locus in quo but the trial tribunal was unable to visit the locus in quo because they had no car. He further submitted that the witness who testified before the trial tribunal lives on that area and had a house for the Respondent is the one who gave him one acre of land out of five (5) acres he is owning since 2003. That, the suit land was sold to Athumani Mafeta. He therefore prayed for this court to dismiss the appeal. In rejoinder the Appellants essentially reiterated their submissions in chief. Having gone through the parties' rival submissions and the record before me, I will begin with determination of the 3rd ground of appeal which refers to procedural irregularities. The Appellants are faulting the trial tribunal for the irregular change of chairmen and assessors without assigning reasons. I have keenly gone through the record and observed that, the matter passed through different chairmen; F. Mdachi, H.E. Mwiha and K.C. Ngonyani. The record reveals that, hearing of the matter commenced Page 4 of 8 before K.C. Ngonyani who recorded the evidence of AW1 and AW2. He also recorded defence evidence of DW1, DW2 and DW3. Then the matter was adjourned for continuation of defence hearing on 15/2/2023. On that date, the record shows that the matter could not proceed as the trial chairman had other task thus, the matter was adjourned to proceed with hearing on 28/3/2023. On that date, the matter was called before Hon. Mwiha and the record reveals that the Respondent asked him to proceed with the matter and the prayer was not contested by the Appellants. Hon. Mwiha proceeded with defence and recorded the evidence of DW4 and composed the judgment. From the above record, I am of the settled view that there was improper change of the trial chairpersons from Hon. K. Ngonyani to Hon. H. Mwiha for no reason was advanced for such change. The predecessor chairperson did not record the reason he

could not proceed with hearing of the matter and the successor chairperson did not record the reason for taking over the proceedings. Since the successor chairperson did not assign reasons for such taking over, it was a clear violation of Order XVIII Rule 10(1) of the CPC which reads; "(1) 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 Page 5 of 8 memorandum taken down or made under 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 the predecessor left it." Undoubtedly, the above provision set the reason that can make another judicial officer to take over unconcluded proceedings. This provision applies to the land tribunal as well and it allows the successor chairman to take over and proceed to hear the matter where the trial chairman is prevented from proceeding and concluding the matter by death, transfer or any other cause. Case law has interpreted the above provision and clearly insisted on recording the reasons for taking over the hearing of the case. In the case of M/S Georges Centre Limited vs Attorney General and Another, Civil Appeal No. 29 of 2016, TanzLii

[2016] TZCA 629 (28 July 2016), the court was faced with akin situation under which the trial judge took over partly heard proceedings. Interpreting the above provision the court had this to say; "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 reasons, he/she is unable to do that. The provision cited above Page 6 of 8 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. There are a number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it is not practicable to do so. For one thing, as suggested by Mr. Maro, the one who sees and hears the witness is in the best position to assess the witness's credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any case before a court of law. Furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised." Based on the above provision and holding of the Court of Appeal, failure to assign reason(s) for takeover is fatal. See also the decisions in Salma Mohamed Abdallah vs Joyce Hume, Civil Appeal No. 149 of 2015 (unreported). As regard to the change of assessors, I have gone through the record and observed that, at the commencement of the matter there were two assessors namely M. Barie and J. Hyera. However, Mr. Barie and Ms. Sulle presided over the matter from the commencement of hearing to its finality and they gave their opinion. I find that since the change of the assessors came before hearing of the matter had commenced, such error is not fatal. Page 7 of 8 However, in considering that there was procedural irregularity regarding the change of chairman, the proceedings subsequent by the successor chairperson and the decision and decree thereto are nullified. The matter is therefore remitted back to the trial tribunal for continuation of hearing of the matter from where the predecessor chairperson ended and upon complying with the legal requirement. Since the 3rd ground of appeal disposes the appeal, there is no need for consideration of other grounds touching evidence for that may

prejudice the outcome of the matter. In the circumstance I will not make an order as to costs. DATED at BABATI this 19th Day of September, 2024. D. C. KAM UZORA JUDGE Page 8 of 8

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