

TANZANIA / JUDGMENT

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14 June 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SHINYANGA SUB REGISTRY AT SHINYANGA LAND APPEAL NO. 33 OF 2023 (Arising from Land Application No. 46 of 2020 at Shinyanga District Land and Housing Tribunal) BETWEEN JUMANNE ZENGO
.....APPELLANT VERSUS MARIA WILLIAM GENEYA
.....RESPONDENT (Administratrix of the estate of the late Ganja Gabriel Geneya)

JUDGMENT

5th & 14th June, 2024 MASSAM, J.: Dissatisfied with the decision of the District Land and Housing Tribunal for Shinyanga in Land Application No. 46 of 2020, the appellant has filed this appeal with a total of five (5) grounds of appeal as depicted from the memorandum of appeal. In the hearing of this appeal appellant was represented by Mr. Emanuel Sululu advocate while the respondent was represented by Mr. Tuli Geoffrey advocate. Submitting to the above ground Mr Sululu said that after 1|Page received a copy of proceedings he found some irregularities which made by the trial chairman in recording the evidence as he recorded it in bullet form while the law require the same to be taken in narrative form as per order XVIII Rule 5 of CPC. He added that on 25/10/2021 the trial chairman ordered the parties to visit the disputed land for clarification of boundaries but the said order was not complied with and the tribunal proceeded with the hearing, without show the reasons why he proceeded without his order to be vacated, he said that the same was wrong and vitiated the proceedings. Another irregularity which conducted by the trial tribunal was that the trial chairman started to hear the said case with two assessors named Kipacha and Steven who heard two witnesses and the other witnesses were heard without any assessors, and the record was silence what happened to that assessors until when the chairman indicated it to his judgment at page 2 that the said assessors their tenure expired, That reasons was required to be indicated to the proceeding first before stated to the judgment, also in the page no 16-22 the record indicated the new set of assessors who were not in the first date of hearing the same is irregularities as they know nothing about the case and what the previous witnesses testified, so they could not in the position of giving the opinion. 2|Page According to the said irregularities, Mr. sululu prayed to this court to nullify the proceedings of this case and set aside judgment and orders ,and the case be remitted to the Shinyanga Land and Housing Tribunal for re trial before another chairman and new set of assessors. Mr. Tuli Geoffrey conceded the prayers prayed by the advocate of the appellant that the proceedings of this case

has some irregularities which are fatal so the same to be nullified and the file be remitted to the trial tribunal. I have considered the matter, the issue to consider is if the irregularities found in the trial tribunal records are fatal, starting with the 1st regularities submitted which is recording of the evidence in bulleting form, the law is very clear under order XVIII rule 5 of the CPC that the evidence of each witnesses shall be taken down in writing in the language of the court ,by or in the presence and under the personal direction and superintendence of the judge or magistrate ,not ordinarily in the form of question and answers but in that of a narrative and the judge or magistrate shall sign the same. This court passed through the trial tribunal records especially in all pages and found out that the evidence were not recorded in narrative form particularly in cross examination and questions from assessors, the chairman used to record the evidence shortly on 3|Page answers only which makes it difficult for this court to understand what was the question which was asked. Also, this court in its perusal finds out that it is true that the chairman ordered the parties to visit to the disputed land to make clarification of the boundaries but the same was not complied with and the chairman proceeded with hearing without vacating his order or giving the reasons why his order was not complied with. Lastly this court finds out that there was interchanging of assessors without recording the reasons of doing so, the records shows that the trial chairman started with two assessors one Kipacha and Steven who heard two witnesses but the tribunal continued without them and later on it introduced the new set of assessors without giving the reasons or whereabouts of the previous assessors, but the reasons of changing them was given in the judgment and not in the proceedings, the law is very clear that the involvement of assessors is legal issue as regulated by section 23(1) (2) (3) of the Land Dispute Courts Act Cap 216 RE 2019, and the Regulations 19(2) of the land dispute courts (District Land and Housing Tribunal) regulations which gives no room to change it without giving the reasons of doing so, and the new set of assessors were not required to give opinion as they were absent when applicant case were started, this 4|Page was well elaborated in the case of Edna Adam Kabona vs Absolom Swebe Civil Appeal No 286 of 2017 CAT at page 5 the court held that the assessors must engage and participate in the proceedings so that they can give their opinion, so in this present court the new set of assessors were not required to give opinions as there were absent when the applicant was testifying to the trial tribunal, this court after found out all errors conducted by the trial chairman ,ask itself if the said irregularities is fatal and vitiates the proceedings of the DLHT, in this case all parties agreed that the said errors are fatal which vitiated the proceedings that's why both of them in their submission prayed this court to nullify the proceedings, quash and set aside the judgment and decree of the trial DLHT and the same to be remitted to the DLHT for re trial. This court is in support of the submission from both side that said the errors leads to injustice and make this court been the 1st appellate court can be difficult to re-evaluate the evidence in case the same is needed. The principle of law established by the court is that the appellant is entitled to have the evidence re-evaluated by the first appellate court and give its own findings. So according to that the said irregularities rendered the trial to be nullity and in the event this court is hereby nullify the entire proceedings 5|Page and quash the judgment of the trial tribunal and decree of the trial tribunal. I subsequent order that the case file be remitted to the DLHT to be re tried before another chairman with competent jurisdiction with another new set of assessors. No order to the costs as none of the parties is to be

blamed for the anomaly. So, each party shall bear its own costs. It is so ordered. Dated and
DELIVERED at Shinyanga this 14th day of June, 2024. R.B. Massam JUDGE 14/06/2024 6|Page

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Prepared on 13 October 2026 · Esheria