

TANZANIA / JUDGMENT

YOHANA JUMA RULING

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10 February 2025

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
DODOMA LAND APPEAL NO. 000026960 OF 2023 YOHANA JUMA
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS MWAJUMA
NUNGU RESPONDENT / DEFENDANT

RULING

HASSAN, J, IN THE HIGH COURT OF TANZANIA DODOMA SUB - REGISTRY AT DODOMA MISC.
LAND APPEAL NO. 26960 OF 2023 (Originating from Land Application No. 88 of 2016 of District
Land and Housing Tribunal for Singida) YOHANA JUMA

.....1ST APPELLANT JAMES IRUNDE

.....2ND APPELLANT MWALIMU MBUA

.....3RDAPPELLANT EDWARD GWAU

.....4THAPPELLANT NDONDE LUE

.....5THAPPELLANT MWANKUWI MAGWE

.....6THAPPELLANT VERSUS MWAJUMA M. NUNGU

..... RESPONDENT RULING 10.02.2025 HASSAN, J.: The

appellants herein were aggrieved by the decision of the District Land and Housing Tribunal (DLHT) for Singida in the Land Application No. 88 of 2016 of which the respondent herein emerged victorious. Upon exercising the right of appeal conferred under section 41 (1)(2) of the Land Disputes Courts Act, Cap. 216 R. E. 2019, the appellants preferred eight (8) grounds of appeal to be determined by the court. However, for the reason to be apparent later, I will not relocate the said grounds of appeal hereunder. Coming on 10th February 2025, the matter was called on for hearing. That being so, the appellants were absent, although they enjoyed legal representation of learned counsel, Mr. John Chigongo. Whereas, on the other side, the respondent was represented by Ms. Agness Zinga, also learned counsel. However, before the parties canvassed to their submissions, the court suo motto raised legal points that affect the validity of the proceedings arrived at the trial tribunal and forming part of the impugned decision. The irregularity observed is whether or not the matter had been properly transferred from one chairman into another. And whether or not the chairman who had presided over the tribunal's proceeding appended his signature at the end of each witness's testimony. Seeing that, I invited the parties to address the court on the validity of issues raised. Therefore, owing to the circumstance, Mr. John Chigongo readily admitted to faults and further submitted that, it is true

that after he went through the record of proceedings, he observed that, indeed, proceedings were flawed. That is, the chairman who presided over the tribunal had not appended his signature into the evidence of each witness after he had recorded it. And that, the mischief is noted from the evidence of all witnesses from both Page. 1 sides. On the other hand, he also acknowledged the flaw that it is crystal clear that there was a transfer of case from the first chairman, Mr. Sululu who presided over testimonies of all witnesses from the applicants and the respondent to another chairman, Mr. Collex who proceeded by visiting the locus in quo and at the end, composed the judgment. However, there was no reason given for such transfer from either chairman. Therefore, in his view, the omission is fatal, and indeed it affects the validity of the proceedings altogether. In the end, owing to the consequences of the irregularities raised, the appellant's counsel prayed that, the court should nullify the entire proceedings, quash the judgment, and further, set aside the orders meted out by the tribunal. And the matter to be retried de novo by another chairman. On the other side, after having enough time for consideration of the issues raised, Ms. Agness Zinga, learned counsel for the respondent readily conceded to the faults and thus, she eagerly joined hand with the appellants counsel's prayers. She briefly added that for the issue of transfer of the case, the authority has to be drawn in the case of Interconsult Limited v. Mrs. Nora Kassanga & Another, Civil Appeal No. 79 of 2015 CAT (unreported) to cement her submission. Based on the context hereabove, I am certain that the legal issues raised by the court Suo motu are obvious on the face of the records. That said, it needs no further efforts to dig deep in researching. The requirement for the chairman to append signature for each witness draws its authority under Order XV111 Rule 5 of the Civil Procedure Code, Cap. 33 R.E. 2022. While, in the same footing, under Order XV111 Rule 10 of the CPC, the requirement of citing the reason for transfer of case is beckoned. It provides: "Power to deal with evidence taken before another judge or magistrate (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 memorandum taken down or made under the foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction." See also, M/s Georges Center Limited vs The Honourable Attorney General & Another (Civil Appeal 29 of 2016) [2016] TZCA 629 (28 July 2016), for further references. In the circumstance, I hold the same view as presented by the counsels above and consequentially I allow the appeal. Thus, in so far as it stands, and guided by the above provisions and dispatched authorities, I hereby nullify the entire proceedings, quash the judgment and set aside the orders handed down. In the end, the application No. 88 of 2021 is remitted to DLHT of Singida for retrial by another chairman and new set of assessors. Each party to bear its costs. Ordered accordingly. DATED at DODOMA this 10th day of February,

2025. S. H. HASSAN JUDGE 10/02/2025 This ruling delivered this 10th day of February, 2025 in the presence of the parties and the matter is ordered to start afresh under new panel. S. H. HASSAN JUDGE 10/02/2025 Dated at DODOMA this 10th of February 2025 . S. H HASSAN JUDGE OF THE HIGH COURT Page. 2

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