

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

DAR ES SALAAM DISTRICT REGISTRY

AT MOROGORO

MISC. LAND APPEAL NO. 10 OF 2022

*(Arising from the Decision of the District Land and Housing Tribunal for
Kilombero/Malinyi in Land Appeal No. 213 of 2018, Originating from Land Case No.
83 of 2017 at Lumemo Ward Tribunal)*

LEONI CHIKUVAS.....APPLICANT

VERSUS

PAULO NGOSI..... 1ST RESPONDENT

ABDALLAH BOLIMA 2ND RESPONDENT

ZAMDA MTUMBIKA 3RD RESPONDENT

JUDGMENT

16th June, 2023

M. J. CHABA, J.

Leoni Chikuvras, herein to be referred to as the appellant, has preferred this second appeal against the decision of the District Land and Housing Tribunal for Kilombero/Malinyi at Ifakara (the appellate tribunal), in Land Appeal Case No. 213 of 2018 which was adjudged in favour of the respondents herein.



Brief facts emanating to this appeal are as follows: The appellant herein sued the respondents before Lumemo Ward Tribunal (the trial tribunal) claiming for recovery of a parcel of land measuring seven acres, located at Mahutanga Village in Lumemo Ward. After a full trial, the trial tribunal decided that the suit land did belong to the appellant. Following that decision, the respondents were unhappy, hence appealed to the first appellate tribunal. When the first appellate tribunal heard and entertained the matter, it ended up to quash the proceedings of the trial ward tribunal and set aside the judgment and decree issued by the trial ward tribunal for being in contravention with the procedural requirements in adducing evidence, and ordered for retrial of the matter before the Lumemo Ward Tribunal. However, the appellant herein was dissatisfied with that decision and therefore he approached this Court seeking to set aside the decision of DLHT fronting four grounds of appeal as follows:

1. That, the District Land and Housing Tribunal for Kilombero/Malinyi was desirous legal and factual errors legal in arriving to the decision.
2. That, the District Land and Housing Tribunal for Kilombero/Malinyi erred in law and upon fact by ordering the matter to be tried de novo, without declaring the appellant as the lawful owner of the disputed land.
3. That, the District Land and Housing Tribunal for Kilombero/Malinyi erred in law and upon fact in its judgment by holding that, the decision of the trial ward tribunal was arrived at contravention of the procedural

requirement of adducing evidence when the appellant on his party and his two witnesses adduced their evidence.

4. That, the District Land and Housing Tribunal for Kilombero/Malinyi erred both in law and upon fact in failing to evaluate the evidence of the suit land in the ward tribunal and submission in the Appeal No. 212 of 2018 in the 1st appellate tribunal and hence forth arrived to the wrong decision.

When the matter was called on for hearing, the appellant appeared in person, and unrepresented whereas the respondents enjoyed the legal services of Ms. Stumani Moshi, the learned advocate. The matter was argued and disposed of by way of oral submissions and both parties submitted at length in support for and against the appeal, respectively.

Having abandoned the second ground, the appellant submitted on the remaining three grounds seriatim: **One;** That, the evidence adduced by three witnesses namely; Omary Chota, Abdallah Lukinga and Hamidu Mtinginya were true and heavier than the respondents as all testified that the disputed land did belong to the appellant, hence prayed for this Court to re-evaluate the records of the trial ward tribunal and come up with its own finding. **Two;** That, it is not true that during the trial at the ward tribunal he didn't testify to extent of not proving that he was the owner of the disputed land, rather it is the DLHT which made incorrect findings.




Three; That, it is not true that the decision of the ward tribunal had defects.

In reply, the learned advocate for respondents in opposition of the appeal, but in support of the impugned decision forcefully argued that, the DLHT of Kilombero/Malinyi at Ifakara, did not dealt with the grounds of appeal but rather it dealt with the technical issues to the effect that the trial ward tribunal was wrong in admitting the claims presented before it in writings by the appellant and the second respondent herein and admitting them as evidence while they were not taken under oath. She highlighted further that, there were no cogent reasons as to why the appellant and the second respondent submitted written statement as their testimonies.

Ms. Situmai Moshi contended further that, if there are errors on the face of the record, the Court/DLHT can do the needful. It was her view that, if this Court will evaluate the record of the DLHT, for sure it will join hands with the decision reached by the DLHT.

Submitting on the evidence adduced by the respondents, the learned advocate underlined that, the same was heavier than the evidence adduced by the appellant for a reason that the appellant bought the disputed parcel of land from a person who had no locus to sale the disputed land.



In rejoinder, the appellant submitted that it is not true that the seller was a minor, and that one Omary Chota, Edward Setema, and Adam Kipange are the ones who witnessed the sale transaction on 21/7/2008. He added that, in 2016 he was allocated the parcel of land by the village government but in 2017 the first respondent trespassed his farm.

I have carefully considered the grounds of appeal, the records of both lower tribunals, rivalry oral submissions advanced by both parties and the relevant law. In determining the present appeal, I will deal with them simultaneously.

The issue that arises from the rivalry arguments on the first, third and fourth grounds of appeal, is whether the trial ward tribunal and the first appellate tribunal failed to make proper analysis of the evidence adduced before the trial ward tribunal. That means, both lower tribunals failed to appropriately analyse the evidence on records. First of all, I will begin with the appellant's complaint that, the DLHT was wrong to hold that the trial ward tribunal erred in law and contravened with the procedural requirements of adducing evidence, taking into account that the decision of the DHLT caught its base from the trial ward tribunal, hence this appeal.

On reviewing the records at hand, it is my considered view that, this appeal can not detain me much. I so believe because, guided by the law



under section 15 of the Ward Tribunal Act [CAP. 206 R. E, 2022], the same clearly provides that: -

"Section 15 (1) - The Tribunal shall not be bound by any rules of evidence or procedure applicable to any court.

(2) A Tribunal shall, subject to the provisions of this Act, regulate its own procedure.

(3) In the exercise of its functions under this Act a Tribunal shall have power to hear statements of witnesses produced by the parties to a complaint, and to examine any relevant document produced by any party."

The above quoted provision is very clear. The Ward Tribunals are not bound by rules of evidence and procedure. The procedures on adducing evidence, is the creature of Civil Procedure Code [CAP. 33 R. E, 2019] (the CPC) and the Law of Evidence Act [CAP. 6 R. E, 2022] which are not applicable in the Ward Tribunal. The Ward Tribunal, in terms of CAP. 206, is not only bound by rules of evidence and procedure but also it regulates its own procedure.

I have thoroughly examined the proceedings in the court records and the decision of the Lumemo Ward Tribunal and observed that the appellant filed the case in the Ward Tribunal on 29th December, 2017 claiming that the respondents have trespassed in his suit land. According to the record,

the hearing commenced on 08th January, 2018 when the appellant gave out his testimony in writings. The appellant was cross-examined by the respondents, before he was questioned by the members of the Ward Tribunal. On 22th January, 2018 the respondent's witnesses namely; Abdallah Lukinga and Omary Chota testified and were cross-examined by the respondents before being questioned by members of the Ward Tribunal.

Again, on 29th January, 2018 the respondents, testified, and were cross-examined by the appellant before being questioned by the members of the Ward Tribunal. From the above elaboration it is clear beyond shadow of doubt that all parties enjoyed the rights to be heard.

Having said so, I am of the view that, in the case at hand, the written submissions by the appellant and the second respondent did not occasion any miscarriage of justice to any party as I have endeavoured to elaborated herein above. In the case of **Yakobo Magoiga Gichere Vs. Penina Yusuph (Civil Appeal No. 55 of 2017) [2018] TZCA 222; (09 October 2018)** extracted from tanzlii.go.tz, the Court held that: -

"With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to

substantive justice; Section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over-reliance on procedural technicalities. Section 45 provides:

"S .45 - No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error; omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

The Court went on expounding that:


Section 13 of the Land Disputes Courts Act underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements. That harmonious spirit cannot be attained if this Court accedes to the prayer of the appellant's learned counsel to prescribe judicially that record of proceedings should mention the member


*who presided the proceedings of the Ward Tribunal
when the Chairman is absent for any reason”.*

Guided by the decision of the CAT, I am in agreement with the appellant that it was wrong for the first appellate tribunal to nullify the proceedings of the trial ward tribunal and set aside the judgment and decree on the basis of the admission of written submissions instead of advancing oral evidence in absence of concrete evidence that there was miscarriage of justice. The omission is salvaged by section 15 (1) of the Ward Tribunal Act, [CAP. 206 R. E, 2002] and section 45 of the Land Disputes Courts Act, [CAP. 216 R. E, 2002].

From the foregoing analysis and observation, I have endeavoured to demonstrate herein above, I find that this appeal has merits and I allow it. Consequently, I hereby quash the proceedings of the District Land and Housing Tribunal for Kilombero/Malinyi and set aside the judgment and decree thereof and any subsequent orders emanated thereto.

As the parties had already argued the appeal before the District Land and Housing Tribunal by way of oral submissions, I remit the case file to the DLHT for it to render a decision which will consider and determine all grounds of appeal presented before it based on substantive justice. No order as to costs. Order accordingly.




M. J. CHABA

JUDGE

16/06/2023

Court:

Judgment to be delivered by the Honourable Deputy Registrar.




M. J. CHABA

JUDGE

16/06/2023