

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT- LAND DIVISION

(IN THE DISTRICT REGISTRY OF MUSOMA)

AT MUSOMA

LAND APPEAL CASE No. 33 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Application No. 66 of 2019)*

RODA MTINGA MTENGERA APPELLANT

Versus

BWIRE MGETA RESPONDENT

JUDGMENT

28.02.2023 & 28.02.2023

Mtulya, J.:

The Court of Appeal on 19th June 2021 in the precedent of **B.R. Shindika t/a Stella Secondary School v. Kihonda Pitsa Makaroni Industries Ltd**, Civil Appeal No. 128 of 2017 had interpreted section 23 and 24 of the **Land Disputes Courts Act [Cap. 216 R.E 2029]** (the Act) on involvement of assessors during proceedings conducted at the District Land and Housing Tribunals, and at page 15 of the judgment the Court resolved that:

The consequences of unclear involvement of assessors in the trial renders such a trial a nullity.

In giving examples of a nullity proceedings the Court of Appeal at page 13 of the judgment identified two circumstances, namely: first, where assessors are not involved throughout the conduct of the trial; and second, where different assessors attend different stages of the proceedings without any recorded reasons.

Today morning **Mr. Cosmas Tuthuru**, learned counsel for Roda Mtinga Mtengera (the appellant) came to this court complaining that in the present appeal record shows that there were several changes of assessors in the proceedings of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 66 of 2019** (the application) without reasons being registered on record. According to Mr. Tuthuru, the record of the application shows that at the commencement of the proceedings, assessors were Matiko and Swagarya whereas in between assessors were Swagarya and Milambo and finally assessor Swagarya alone who had produced opinions to the tribunal without the second assessor.

In his opinion in the situation displayed on the record, it cannot be safely said that the tribunal delivered justice to both parties, as some of the assessors did not hear some of the witnesses. In order to make his move understood, Mr. Tuthuru

cited the Court of Appeal precedent in **B.R. Shindika t/a Stella Secondary School v. Kihonda Pitsa Makaroni Industries Ltd**, (supra) and prayed this court to quash both proceedings and judgment of the tribunal in the application and if any party is so interested in the dispute, may wish to file fresh and proper suit in accordance to the law.

The passage taken by Mr. Tuthuru was buoyed by **Mr. Amosi Wilson** with the support of authorities in **Edina Adam Kibwana v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 and **Sakina Sadiki Mbanu v. Amina Saidi Butete & Five Others**, Civil Appeal No. 104 of 2018. On available remedies, Mr. Wilson cited two courses that may be preferred by this court, namely: first, to order for a retrial of the contest; and second, to let it to the parties to decide their fate. However, he contended further that Mr. Tuthuru's prayer may be granted as it was his client who had initiated the application in the tribunal.

I have perused the record of this appeal and grasped the submissions of learned counsels. The record shows that the application in the tribunal was initiated by the appellant on 23rd April 2019 and was scheduled for mention a month later, 23rd May 2019. The first hearing date was set on 6th August 2019, and assessors present on record are Matiko and Swagarya. On 12th

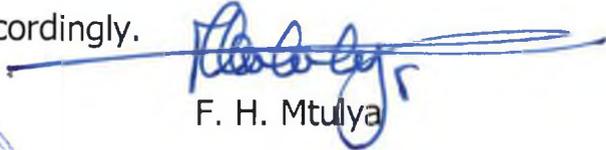
November 2019, Swagarya and Milambo took their seats as assessors. When hearing schedules were busy for two days, 13th December 2019 and 14th February 2022 Swagarya alone took the seats of the tribunal as assessor. On 3rd March 2022 and 13th March 2022, both Matiko and Swagarya appeared again on the record. However, at the end of the proceedings on 28th March 2022, it is only Swagarya who produced his opinions. It is unfortunate that the tribunal is silent in the proceedings on: first, reasons of the changes of the indicated assessors; second, how Matiko found his way in and out of the seats of the tribunal during the hearing of the application; and finally, why the same Matiko was refused opportunity to offer his opinions before drafting of the judgment of the tribunal.

According to the Court of Appeal: *that is unclear involvement of assessors* and it is fatal irregularity which vitiates proceedings. Regarding available remedies in circumstances like the present one, the Court of Appeal resolved that proceedings be nullified and each party to take its course (see: **Edina Adam Kibwana v. Absolom Swebe (Sheli)** (supra)). In the present appeal, there is obvious unclear participation of assessors in the application which makes the proceedings a nullity. In the end, I invoke the mandate enacted under section 43 (1) (b) of the Act,

to nullify proceedings and quash judgment of the tribunal in the application, as I hereby do so, for want of proper application of section 23 and 24 of the Act. If any party is still interested in the contest, may wish to initiate new course in appropriate forum in accordance to the current laws regulating land disputes. I order no costs in the present appeal as the wrong was committed by the tribunal in inviting and participating different assessors at different levels of hearing in the application.

Ordered accordingly.

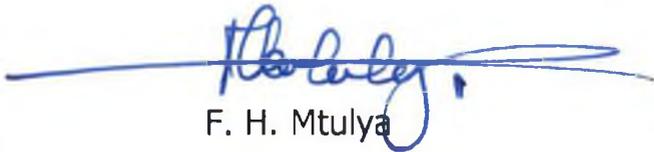



F. H. Mtulya

Judge

28.02.2023

This judgment was delivered in Chambers under the Seal of this court in the presence of the respondent, **Mr. Bwire Mgeta** and in the presence of parties' learned counsels, **Mr. Cosmas Tuthuru** and **Mr. Amosi Wilson**.


F. H. Mtulya

Judge

28.02.2023