

**IN THE COURT OF APPEAL OF TANZANIA  
AT MWANZA**

**(CORAM: WAMBALI, J.A., KOROSSO, J.A. And FIKIRINI, J.A.)**

**CIVIL APPEAL NO. 107 OF 2019**

**PETER MAKURI.....APPELLANT**

**VERSUS**

**MICHAEL MAGWEGA.....RESPONDENT**

**(Appeal from the Judgment of the High Court of Tanzania at Mwanza)**

**(Mlacha, J.)**

**dated the 23<sup>rd</sup> day of September, 2016**

**in**

**Land Appeal No. 136 of 2015**

.....

**JUDGMENT OF THE COURT**

14<sup>th</sup> & 23<sup>rd</sup> February, 2022.

**FIKIRINI, J.A.:**

This is a second appeal. The dispute in this appeal is on ownership of a house (suit property) allegedly purchased by parties on different dates and prices, but seemingly from the same persons. Loathed by the state of affairs, the respondent filed an application before the District Land and Housing Tribunal for Tarime (the Tribunal) in Application No. 100 of 2012. He sued Samwel Wanene Samson and Rael Siya Marwa as the first and

second respondents and Peter Makuri, the present appellant, as the third respondent. The respondent won at the Tribunal and the High Court of Tanzania in Land Appeal No. 136 of 2015.

The brief background leading to this appeal is that the respondent bought the suit property from the first and second respondents on 26<sup>th</sup> September, 2012, and paid Tzs. 8,600,000/= as the purchase price. The money allegedly was deposited in the present appellant's account, a third respondent at the Tribunal. Despite the first and second respondents seeming to have vanished after the alleged fraudulent sale; still, the matter proceeded *ex parte* against them.

According to the respondent, the vendors promised him that the premises would have fallen vacant after twenty-six (26) days to create vacant possession for the respondent. Little did the respondent know his dream would never become a reality, as the appellant also had a claim over the suit property and was already in occupation by then. Believing he was more entitled than his counterpart, the respondent lodged his complaint before the Tribunal. As stated earlier, the respondent won both at the Tribunal and the High Court. Undeterred, the appellant has now filed

an appeal to this Court raising thirteen (13) grounds through a memorandum of appeal.

However, for the reasons to be apparent soon, the grounds of appeal will not be reproduced.

When the appeal was called on for hearing on 14<sup>th</sup> February, 2022, the appellant and the respondent entered appearance in person unrepresented. Before the appeal hearing commenced, we wanted to satisfy ourselves as to the appropriateness of the proceedings before the Tribunal in Application No. 100 of 2012. That prompted us to raise a question *suo motu* on whether the Chairman of the Tribunal, who sat with two assessors, complied with the mandatory requirement of sections 23 (1), (2), and 24 of the Land Disputes Court Act, Cap. 216 R.E. 2002 (the Act).

We posed the question because the record does not show if the Chairman had requested and received opinions from the two assessors who sat with him. We also noted even in his judgment he never referred to the assessors' opinion. What is reflected on the record of proceedings is after the conclusion of the hearing on 25<sup>th</sup> May, 2015, the Chairman fixed

27<sup>th</sup> July, 2015, as a date for visiting the *locus in quo*. After the visit, he pronounced the 24<sup>th</sup> September, 2015, to be a judgment date.

Both parties acknowledged the irregularity and, being laypersons, with nothing to recommend from the legal stance, urged us to do what is legally required.

It is a mandatory legal requirement that in adjudicating land matters before the Tribunal, the Chairman sits with aid of assessors. The assessors sitting in are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose a decision of the Tribunal. And all these must be reflected on record of proceedings. Besides, where the Chairman disagrees with the opinion of the assessors, he must record reasons. In the absence on record of the opinion of assessors, it is impossible to ascertain if they did give any opinion for consideration in composing the judgment of the Tribunal. See: **Emmanuel Christopher Lukumai v. Juma Omari Mrisho**, Civil Appeal No. 21 of 2013.

In our endeavor to find an answer to our query, guided with the above decision, we also find it apt to start with what the law provides, and

on that, we start with sections 23(1) and (2) of the Act, dealing with the composition and role of assessors. The provision reads:-

*"23 - (1) The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors.*

*(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment."*

From the provision of section 23 (1) and (2), the composition of the Tribunal has been listed to be mandatorily, a chairman sitting with not less than two (2) assessors. On the other hand, under section 23 (2), which has to be read together with Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN No. 174 of 2003 (the Regulations), the requirement is that after taking part in the conduct of the matter, the assessors are required to give their opinions in writing and the same be read out to the parties before the Chairman pronounce a decision which has incorporated those opinions. See: **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported)

In the present appeal, there is no doubt that the Chairman sat with two (2) assessors from the commencement of the hearing. However, the record is silent on the Chairman soliciting the assessors' opinion, causing them to be read out to parties and incorporating those opinions in his judgment as required sections 23 (2), 24 of the Act and Regulation 19 (2) of the Regulation; and if he had any differing opinions to be reflected on the record. The provision of section 24 of the Act states:

*"24. In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman **shall in the judgment give reasons for differing with such opinion.**"*

[Emphasis Added]

Canvassing through the Chairman's decision found on pages 61 to 69 of the record of appeal, it is apparent apart from not being sought, there is no consideration of assessors' opinions, as nothing is reflected in the judgment. In the case of **The General Manager Kiwengwa Strand Hotel v. Abdallah Said Musa**, Civil Appeal No. 13 of 2012 (unreported), the Court faced with the scenario stated as follows:

*"Since Regulation 19 (2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in the presence of parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the chairman in the final verdict."*

Failing to request, receive, read out to parties, and consider the assessors' opinion in the Tribunal decision as is the case in the instant case, regardless of whether the Chairman agreed or not with the opinion, is a fatal omission that goes to the root of the matter, consequently vitiating the proceedings. Guided by the position in our previous decision of **Yakobo Magoiga Kichele v. Penina Yusuph**, Civil Appeal No. 55 of 2017 (unreported), we wish to echo the stance that omission by the Chairman of the Tribunal cannot be salvaged under section 45 of the Land Disputes Courts Act prescribing and augmenting on substantive justice, as it occasioned injustice to the parties.

Accordingly, we invoke our revisional jurisdiction conferred upon us under section 4(2) of the Appellate Jurisdiction Act, R. E. 2019 to nullify and quash the entire proceedings before the Tribunal and the subsequent proceedings before the High Court in Land Appeal No. 136 of 2015.

Consequently, we quash the proceedings and order a trial *de novo* before another Chairman and a new set of assessors. No order as to costs as the Court raised the matter *suo motu*.

It is so ordered.

**DATED at MWANZA** this 23<sup>rd</sup> day of February, 2022.

F. L. K. WAMBALI  
**JUSTICE OF APPEAL**

W. B. KOROSSO  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

The Judgment delivered this 23<sup>rd</sup> day of February, 2022 in the presence of both appellant and respondent in person is hereby certified as true copy of the original.



  
G. H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**