

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL NO. 8 OF 2020

*(Arising from the Judgement of the District Land and Housing Tribunal for Mara
at Musoma in Application No. 126 of 2017)*

ANDREW SITTA APPELANT

VERSUS

SILIVESTA MIOKI KISIKA RESPONDENT

RULING

Date of Last Order 28.4.2020
Date of Ruling: 26.5.2020

KISANYA, J.:

Before the Land District and Housing Tribunal for Mara at Musoma, the respondent, Silvesta Mioki Kisika, successfully sued Andrew Sitta, for trespassing onto his land located at Mubisaka Hamlet, Kamgagi Ward, Butiama District (disputed land). Petition of appeal to challenge the said decision was filed before this Court by one Kyangwe Sitta.

Upon noting that the judgement and decree attached to the petition of appeal were issued against Andrew Sitta and not Kyangwe Sitta, the Court invited the parties to clarify on address on the names of parties to the appeal. The said Kyangwe Sitta submitted that he is also known as Andrew Sitta. He therefore requested to amend the petition of appeal to read as Andrew Sitta as appeared in the trial Tribunal. The respondent left for the Court to decide on the request. Considering the need to uphold substantive justice, the request to amend the

petition by deleting the name “Kyangwe” and substituting for it the name of “Andrew” was granted.

From the very outset, the Court observed irregularities in the proceedings of the District Land and Housing Tribunal (hereinafter referred to as the Tribunal). These irregularities were on the failure by the Chairman to sit with assessors and change or replacement of set assessors after the commencement of the hearing. Therefore, parties were asked to address on whether the Tribunal was properly constituted.

The appellant stated that the case was partly heard by Hon. Kaare (Chairman) who did not sit with assessors on some dates. He contended further that, when the case was transferred to another Chairman (Kitungulu, E.) there was change of assessors. Therefore, the appellant was of the view that the proceedings before the trial Tribunal were vitiated. Being a lay person, he did not state the law offended. He left for the Court to decide on the said irregularities.

On his part, the respondent conceded that there was change of set of assessors when the case was transferred from one Chairman to another. He also left for the Court to decide the matter in accordance with the law.

The issue raised by the Court, *suo motu*, is based on section 23 of the Land Disputes Courts Act [Cap. 216, R.E. 2002]. This provision provides that, the District Land and Housing Tribunal is properly constituted when the Chairman sits with not less than two assessors who are required to give opinion. If during the proceedings, one or both assessors who were present at the commencement of proceedings is or are absent, the proceedings may proceed before the Chairman and the remaining assessor. The said section reads as follows:

“23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a 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.

(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence.” [Emphasize is mine].

It follows that, if the Tribunal does not sit with assessors or where there is a change or replacement of assessors, the trial proceedings are vitiated for contravening section 23 of the Land Disputes Courts Act, Cap, 216, R.E. 2002. In the case of **Y.S. Chawalla & Co. Ltd vs Dr. Abass Teherali**, Civil Appeal N^o. 70 of 2017, CAT at Tanga (unreported), the Court of Appeal had the following position on replacement of assessors:

“Having heard the parties, we confirmed our concern that, in the course of trial, the Tribunal Chairperson was irregularly aided by different sets of assessors. The irregular procedure did not augur with the provisions of section 23(3) of the Land Disputes Courts Act...

As we have vividly demonstrated, in the proceedings under our consideration, there was an unwarranted replacement of assessors on several occasions. The replacement offended the clear provision of the law which we have extracted and will alone, suffice to vitiate the trial proceedings of the Tribunal.”

In the case at hand, both parties have confirmed that there was replacement of assessor during trial before the District Land and Housing Tribunal. It is on record that, the plaintiff case (PW1, PW2 and PW3) was heard on 22/1/2018 whereby the Hon. Chairman (Kaare) sat with assessors namely, Mr. Indal and Mrs. Magesa. Thereafter, the case was called on for defence hearing on 5/9/2018 and 7/9/2018 and the appellant (DW1) gave his evidence on those

days. However, the record does show assessors who were present on 5/9/2018 and 7/9/2018.


Further, following recusal of Hon. Kaare, the case was transferred to another Chairman (Hon. Kitungulu, E.) He proceeded where his predecessor ended. Thus, the appellant (DW1) proceeded with his defence. However, this time, the Chairman sat with another set assessors namely, Mr. Babere and Mr. Swagarya. They were also present when DW2 gave his evidence. The reasons as to why Mr. Indal and Mrs Magesa could not proceed with the case were not stated.

With these findings, I am of the considered opinion the proceedings before the District Land and Housing Tribunal were vitiated due to change or replacement of assessors without assigning reasons and for failure by the Chairman to sit with assessors on 5/9/2018 and 7/9/2018. It is not known as to how the said Babere and Swagarya were able to give their opinion while they were not present when the respondent and the appellant gave their evidence.


For the aforesaid reasons, I am inclined to invoke the revisional powers conferred on the Court by nullifying and quash the proceedings and set aside the judgement and decree of the District Land and Housing Tribunal. I hereby order the case to be retried before another Chairman and new set of assessors. I make no order as costs due because the issue of irregularity was raise by the Court, *suo motu*. Order accordingly.

Dated at MUSOMA this 26st day of May, 2020.



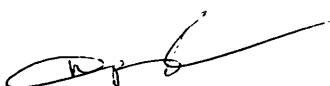

E. S. Kisanya
JUDGE
26/5/2020

Court: Ruling is delivered in open Court this 26th day of May, 2020 in the presence of the applicant and the respondent.



E. S. Kisanya
JUDGE
26/5/2020

Court: Right of further appeal is explained.



E. S. Kisanya
JUDGE
26/5/2020