

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)**

**AT MUSOMA**

**LAND APPEAL NO. 23 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara  
at Musoma in Land Appeal No. 263 of 2018)*

**NIKODEMU MUNUBHI ..... APPELLANT**

**VERSUS**

**MELANGO SAMSON ..... RESPONDENT**

**RULING**

*28<sup>th</sup> April and 8<sup>th</sup> May, 2020*

**KISANYA, J.:**

The appellant, Nikodemu Munubhi filed application No. 24 of 2018 before the Nyamrandirira Ward Tribunal, claiming for ownership of his piece of land located at Seka Village. The said application was decided in favour of the respondent. The appellant opted to appeal to the District Land and Housing Tribunal for Mara at Musoma (appellate Tribunal). In its judgement, the appellate Tribunal upheld the decision of the Nyamrandirira Ward Tribunal. It is the said decision which gave rise to the present appeal.

At the hearing of the appeal before it, the District Land and Housing Tribunal was constituted by the Chairman and two assessors namely, Mr. Babere and Mr. Swagarya. The proceedings do not show as to whether the assessors who heard the appeal gave their opinion in the presence of the parties.

Therefore, when this appeal was placed before me for hearing, the Court *suo motu*, asked the parties to address on whether the District Land and Housing Tribunal was properly constituted. To be specific, the parties were called upon to state whether the opinion of assessors was read to them; and if the answer is not in affirmative, its effect to the case at hand.

The appellant told the Court that, the opinion was not read to them. He contended further that, the assessors were not present at the hearing of the appeal. On his part, the respondent submitted that the Chairman sat with two assessors and that, each assessor gave the opinion before the date of judgement. Thus, the respondent was of the considered view that, the appellate Tribunal was properly constituted.

According to section 23 (1) and (2) of the Land Disputes Courts [Cap. 216, R.E. 2002], the District Land and Housing Tribunal is properly constituted by the Chairman and not less than two assessors. Further, before the Chairman writes the judgement, he is duty bound to require every assessor to give his/her opinion. This is pursuant to regulation 19(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 which provides:

*“(1) The Tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgement on the spot or reserve the judgement to be pronounced later;*

*(2) Notwithstanding sub-regulation (1) the Chairman shall, before making his judgement, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili”*

It is now settled that, the opinion of assessors should be given in the presence of the parties. Also, the record or proceedings should display that, the opinion of assessors has been taken or read in the presence of the parties to the case. This position has been stated by the Court of Appeal in several cases. For instance, in **Tubone Mwambeta Versus Mbeya City Council, Civil Appeal No. 287 of 2017 (unreported)**, the Court of Appeal held that:

*"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors...they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed...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 the 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."*  
(emphasize supplied)

In the instant appeal, the respondent told the Court that, the opinion was given in their presence. I have read the proceedings of the Land and Housing Tribunal. They do not show whether the opinion of assessors was given or read in the presence of the parties. It is on record that, at the conclusion of the hearing of the appeal, assessors were not addressed or told to give their opinion. The appellate Tribunal ordered judgment would be delivered on 5/7/2019. When the matter came up for judgement on 5/7/2019, the assessors were not present and the appellate Tribunal ordered that, the judgement date was adjourned to 15/7/2019. It is on 15/7/2019 when the Chairman ordered that the assessors' opinion would be given on 30/07/2019.

However, the assessors are not on coram of 30/07/2019. On that date, the judgement was read in the presence of the parties. It is not shown as to whether the opinion of assessors was read on that day. Therefore, I find and hold that the opinion was not read in the presence of the parties.

I have noted further that, the case file has the opinion alleged to have been written by Masinga Balare and A.R. Swagarya on 2/7/2019 and 26/06/2019 respectively. However, the said opinion has no useful purpose in the eyes of law because it is not known as to when and how the same formed part of the proceedings. This is based on the decision of the Court of Appeal in **Edina Adam Kibona vs Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017, Court of Appeal at Mbeya (Unreported), when it held that:

*“For avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgement. However, in view of the fact that the record does not show that the assessors were required give them, we fail to understand how and at what stage they found their way in the court record. And in further view of the fact that they were not read in the presence of the parties before the judgement was composed, the same has no useful purpose.”*

In view of the above, I hold that the proceedings before the District Land and Housing Tribunal were vitiated due to failure to read or take opinion of assessors in the presence of the parties.

For the aforesaid reason, I exercise the revisional power conferred on the Court by section 43 of the Land Disputes Courts Act [Cap. 216, R.E. 2002] to quash the proceedings and set aside the judgement and decree of the

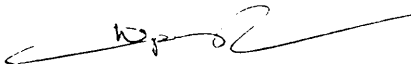
District Land and Housing Tribunal. I hereby direct the rehearing of the appeal before another Chairman and new set of assessors. Since the irregularity which has disposed of this appeal was raised by the Court, *suo motu*, I make no order as costs of this appeal. Order accordingly.

Dated at MUSOMA this 8<sup>st</sup> day of May, 2020.

  
E. S. Kisanya  
JUDGE  
8/5/2020

Court: Ruling is delivered this 8<sup>th</sup> day of May, 2020 in the presence of the appellant and the respondent



  
E. S. Kisanya  
JUDGE  
8/5/2020