

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

AT MUSOMA

LAND APPEAL NO. 34 OF 2019

*(Arising from the Judgement of the District Land and Housing Tribunal for Mara
at Musoma in Application No. 69 of 2018)*

MARIA KAKWAYA APPELLANT

VERSUS

LUCAS MAGORI RESPONDENT

RULING

Date of Last Order 24.4.2020

Date of Ruling: 19.5.2020

KISANYA, J.:

In Application No. 69 of 2018 filed in the Land District and Housing Tribunal for Mara at Musoma (the Tribunal), the appellant claimed that the respondent had trespassed onto his land located at Kangwa Street within Musoma Municipality (the suit premises). After full hearing, respondent was declared the lawful owner of the suit premises. The appellant was dissatisfied by that decision. She therefore filed the present appeal before this Court.

When this matter came up for hearing, the Court noted an irregularity in the proceedings before the Tribunal. This was in respect of opinion of assessors. The record did not show whether the Chairman addressed the assessors to give their opinion and whether the same was given in the presence of the parties. Since the said irregularity was not stated in the petition of appeal, the Court asked the parties to address on whether, the Tribunal was properly constituted or whether the opinion of assessors were given in accordance with the law.

In his submission, the appellant stated that the Chairman of the Tribunal set with two assessors at hearing of the application. However, she claimed that their opinion was not given in the presence of the parties. The appellant stated further that the assessors were not present on the date of judgement. Being a lay person, the appellant left for the Court to decide on the effect of the said omission.

On his part, the respondent submitted that the opinion of assessors was given before the date of judgement.

The issue raised by the Court, *suo motu*, is based on section 23 (1) and (2) of the Land Disputes Courts [Cap. 216, R.E. 2002] read together with

regulation 19(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. These provisions provide, *inter alia*, that the District Land and Housing Tribunal is constituted properly when the Chairman sits with not less than two assessors. The said assessors are required to give their opinion before the judgement is composed by the Chairman. In this regard, the Chairman is obliged to address the assessors to give their opinion and ensure that, their opinion is taken or read in the presence of both parties to the case. Non-compliance to these provision renders the whole proceedings before the Tribunal a nullity. This position was stated by the Court of Appeal in **Tubone Mwambeta Versus Mbeya City Council, Civil Appeal No.287 of 2017 (unreported)**, where it was held as follows:

"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."

I have gone through the record and proceedings which gave rise to the instant appeal. The defence case was heard on 15/8/2019. The respondent gave his evidence on that day. He was then cross examined by the two assessors namely, **Milambo** and **Matiko**. However, the proceedings do not show whether the respondent closed the defence case. Further, no order was issued by the Court on that day. It is on record that the case came up for judgement on 26/9/2019. The assessors are not in the coram of 16/9/2019. The Hon. Chairman recorded as follows:

"This application is coming for judgement. The same has been delivered in the presence of both parties. Rights of appeal explained.

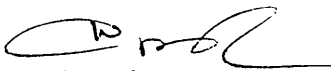
Therefore, basing on the above, it is clear that the opinion of assessors was not given in accordance with the law. This is because, the Chairperson did not address the assessors to give the opinion. Also, it was not shown as to whether the opinion of assessors was given in the presence of both parties. In his judgment, the Chairman indicated that, he was not in agreement with the assessors' opinion. If there is opinion given by the assessors, then

the same was given contrary to the law. As the opinion of assessors was not taken in accordance with the law, the proceedings before the District Land and Housing Tribunal were vitiated. Thus, the Tribunal was not properly constituted in determining the application.

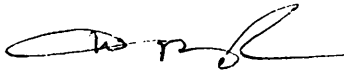
For the aforesaid reason, I exercise the revisional power conferred on the Court to quash the proceedings and set aside the judgement and decree of the District Land and Housing Tribunal in Application No. 69 of 2018. The case file is remitted to the Tribunal for rehearing before another Chairman and new set of assessors. I make no order as to costs because the issue of irregularity was raised, by the Court, *suo motu*. It is so ordered.

Dated at MUSOMA this 19st day of May, 2020.




E. S. Kisanya
JUDGE
19/5/2020

Court: Ruling is delivered in Chamber this 19th day of May, 2020 in the absence of the parties with leave of the Court. Parties to be notified to collect copy of ruling.


E. S. Kisanya
JUDGE
19/5/2020