

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

LAND APPEAL NO. 46 OF 2018

*(From the District Land and Housing Tribunal for Rungwe at Tukuyu in Land
Application No. 36 of 2016)*

PHILIP ALBERT MWANSASU.....APPELLANT

VERSUS

IPONJOLA VILLAGE COUNCIL.....RESPONDENT

JUDGEMENT

Date of Last Order : 26/03/2020
Date of Judgement: 07/05/2020

MONGELLA, J.

After losing in the District Land and Housing Tribunal for Rungwe (Tribunal), the appellant has come to this court on appeal. Through the legal services of Mr. Obeid Mwandambo, learned advocate, the applicant filed a memorandum of appeal containing five grounds and later prayed to file additional grounds. The prayer was granted and he filed three additional grounds of appeal. Among the grounds, I am going to deliberate on only one ground which shall determine if it shall be necessary to determine the remaining grounds. The said ground was filed as an additional ground and is to the effect that:

"The Hon. Chairman erred in law and fact when he failed to consider opinion of assessors in his judgment and in the record of proceedings."

The appeal was argued by written submissions which were filed in time in this Court by both parties.

Arguing on this ground, Mr. Mwandambo submitted that section 23 (1) and (2) requires the Tribunal to be composed of one chairman and not less than two assessors and for the assessors to give their opinion before a judgment is composed. He argued first that the Tribunal Chairman proceeded to hear the evidence from parties while the Tribunal was not duly constituted as seen at page 12 and 18 of the typed proceedings. Secondly he argued that the record as seen in the proceedings does not indicate as to whether the opinion of assessors was considered by the Chairman. Referring to the case of **S.D.A Church Keisangula v. Nyaikwabe Masare**, Civil Appeal No. 112 of 2015; **Ameir Mbarak & Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015; and that of **Edina Adamu Kibona v. Absolom Swebe Sheli**, Civil Appeal No. 286 of 2017 (all unreported) he prayed for the judgment and decree of the Tribunal to be quashed.

Responding to this ground of appeal, Mr. Osiah Adam, learned advocate for the respondent shortly argued that the trial Tribunal adhered to requirements of the law in recording the opinion of assessors as it can be seen in the proceedings

I have considered the arguments by both counsels and read the Tribunal record. In the judgment, at page 4, the Hon. Chairman appears to mention about the opinion of assessors. He stated:

"There was only one assessor who fully participated in hearing of this matter: one Mrs. Hilda Mwasikili opined that as per evidence on records the respondent has the right over the suit land."

However, the participation of assessors is not reflected in the proceedings of the matter. At page 20 of the typed proceedings, it is clear that after the defence closed its case, the Chairman gave two orders to wit: 1. Judgment on 04/05/2018; and 2. the defence case is closed. The record neither indicates the assessors being invited to give their opinion, when the opinion was filed in the Tribunal, nor them giving their opinion in the presence of the parties before composition of the judgment as required under **Regulation 19 (2) of the Land Disputes Courts (the District and Housing Tribunal) Regulation, 2003** and **Section 23(1) and (2) of the Land Disputes Courts Act, Cap 216, R.E. 2002**.

Though the Tribunal Chairman mentioned about the opinion of assessors in his judgment, this Court cannot take it for granted that the opinion was given in accordance with the law in the absence of the same being reflected in the proceedings. The CAT in **Ameir Mbarak and Azania Bank Corp Ltd. v. Edgar Kahwili**, (supra) held that:

"Therefore in our considered view, it is unsafe to assume the opinion of assessors which is not on the record by merely reading the acknowledgment of the Chairman in the

judgment. In the circumstances, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity."

In the case of ***Edina Adam Kibona v. Absolom Swebe (Sheli)***, (supra) the CAT citing with approval the case of ***Tubone Mwambeta v. Mbeya City Council***, Civil Appeal No. 287 of 2017 (unreported) held:

"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 meaningfully 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."

The Court held further that:

"For the 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 judgment. However, in the view of the fact that the records do not show that the assessors were required to give them, we fail to understand how and at what stage they found their way into the Court record. And in further view of the fact that they were not read in the presence of the parties before the judgment was composed, the same has no useful purpose."

As already pointed out, the proceedings of the Tribunal in this matter do not reflect the active participation of assessors as required under the law. Under the circumstances the judgement of the Tribunal is found to be improper. In essence, I can say that there is no proper judgment before this Court for it to entertain in appeal.

Following this observation I quash the proceedings and judgment of the Tribunal and order a re-trial before another Chairman and a different set of assessors. Since the appeal has been disposed on a ground based on procedural error of the Tribunal and not the parties, I make no orders as to costs.

It is so ordered.

Dated at Mbeya on this 07th day of May 2020


L. M. MONGELLA
JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 07th day of May 2020 in the presence of the respondent and his advocate Mr.

Osiah Ad...




L. M. MONGELLA
JUDGE