

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

AT MBEYA

**LAND APPEAL NO. 64 OF 2019**

***(Arising from Application No. 107 of 2011, in the District Land and  
Housing Tribunal for Mbeya at Mbeya)***

**MRS TIMOTH MWAKAJE.....APPLICANT**

**VERSUS**

**REV. KENETH MAGANJA.....RESPONDENT**

**JUDGMENT**

**20 & 22/5/2020**

**UTAMWA, J:**

This is an appeal by Mrs. Timoth Mwakaje (the appellant). She challenges the decision and orders of the District Land and Housing Tribunal for Mbeya at Mbeya (DLHT). A total of five grounds of appeal were preferred for determination by this court.

When the appeal came for hearing, Mr. Luko Deda, learned advocate represented the appellant whereas M/s Silivia Mwalwisi, learned advocate held briefs for M/s Mary Mgaya, learned advocate for the respondent. M/s Mwalwisi submitted to the court that, the respondent concedes to the first ground of appeal which states that, the Trial Tribunal erred both in point of law and facts for failure to consider assessors' opinion and failure to order

for the same opinion to be read out to the parties according to the law. She thus, prayed for this court to allow the appeal on that ground only without costs. This was because, the error was committed by the DLHT and not by the parties. She further prayed for the court to order the matter to be tried denovo.

On his part, the appellant's counsel did not object to the prayers made by the learned counsel for the respondent.

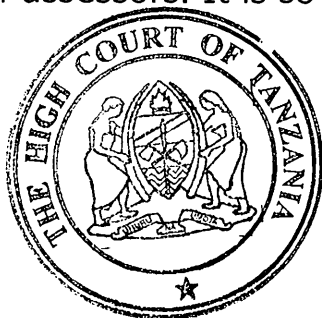
I have considered the record, the arguments by the parties and the law. Indeed, I totally agree with position adopted by the parties on the following grounds: It is the requirement of the law i.e, section 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 RE 2002 and rule 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 (the Regulations) provides that, the Chairman of the DLHT must require every assessor to give his opinion in writing. The opinion may be in Kiswahili. That opinion must be in the record and must be read to the parties in court before the judgment is composed.


However, the record of the DLHT shows that, the Chairman of the DLHT did not comply with the law cited above.

The irregularities committed by the DLHT were thus fatal and incurable: See the decisions of the Court of Appeal of Tanzania (the CAT),

in the cases of **Edina Adam Kibona v. Absolom Swebe (SHELI) CIVIL Appeal No. 286 of 2017 CAT at Mbeya** (unreported), **Tubone Mwambeta v. Mbeya City Council Civil Appeal No. 287 of 2017 CAT at Mbeya** (unreported) and **Ameir Mbarak and Another v. DGAR Kahwili, Civil Appeal No. 154 of 2015 CAT at Iringa** (unreported).

Owing to the above reasons, I uphold the first ground of appeal. I also see no need to consider the rest of the grounds of appeal. I consequently allow the appeal to the extent shown above. The proceedings of the DLHT are thus, nullified and quashed. Its judgment is accordingly set aside. Each party shall bear his own costs as agreed by the parties. If the parties still wish, they may pursue their rights according to the law. In case they chose to pursue the matter, it shall be retried denovo. The hearing shall be expedited since the matter is very old so that fair trial and justice will be promoted. It shall be heard before another Chairman and a new set of assessors. It is so ordered.



  
J.H.K. UTAMWA,  
Judge  
22/5/2020

22/05/2020.

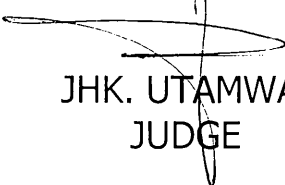
CORAM; Hon. JHK. Utamwa, J.

Appellant: present in person.

Respondent; absent

BC; Mr. Patric Nundwe, RMA.

Court: Judgment delivered in the presence of the appellant, in court, this 22<sup>nd</sup> May, 2020. The respondent be notified of this judgment

  
JHK. UTAMWA.  
JUDGE  
22/05/2020.