

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

MISCELLANEOUS LAND CASE APPEAL NO 08 OF 2020

BHOKE CHACHA MAGOCHAAPPELLANT
Versus
NYITAMBOKA KITANG'ITA RESPONDENT

RULING

26th June & 10th July, 2020
Kahyoza, J.

Bhoke Chacha Magocha sued Nyitamboka Kitang'ita before Majimoto Ward Tribunal claiming that Nyitamboka Kitang'ita invaded her land (the disputed land). Nyitamboka Kitang'ita won the case and Bhoke Chacha Magocha appealed to the District Land and Housing Tribunal (the **DLHT**). The **DLHT** upheld the decision of the ward tribunal. Dissatisfied still by the decision of the **DLHT**, Bhoke Chacha appealed to this Court.

Bhoke Chacha Magocha raised eight grounds of complained against the decision of the which I will not reproduce them here for reason which will be evident. On the day fixed for hearing the appellant argued all the grounds of appeal and submitted that the judgment of the **DLHT** was a nullity because it did not show the list of the assessors who participated. To support her contention, she tendered a copy of the decision of this Court in the case of **Ghati Warioba v Anastazia Warioba** Land Appeal No. 3/2019 HC Musoma. The respondent's advocate Mr. Mahemba among other things replied to this submission

that the record of the **DLHT** shows that the chairman head the appeal with aid of two assessors as provided by section 23(2) of the Land Disputes Courts Act Cap. 216. He added that although the judgment did not indicate the names of the assessors, but the chairman took into consideration their opinion. He added that the opinion of the assessors was read to the parties.

I examined the record of the **DLHT** and found that the opinion of the assessors was in the record as submitted by the respondent's advocate. The record shows that the assessors as A.R Swagarya and Mr. John Masiaga Belere. However, I noticed that the said opinion was not read to the parties. I invited the parties to address the court on the said omission. It is a settled position of the law of the law that an omission by chairman of the **DLHT** to read or cause the opinion to be availed to the parties before he writes and delivers the judgment vitiates that proceedings of the tribunal.

The appellant submitted that she had noticed the same and addressed this Court on that omission.

On the other hand, Mr. Mahemba advocate submitted that it was true that the **DLHT** did not read the opinion of the assessors to the parties. He contended that regulation 19(2) of the **Land Disputes Courts Act (District Land and Housing Tribunal) Regulations**, 2002 G.N. 174/2003 and section 23(1) and (2) of the **Land Disputes Courts Act**, (Cap. 216), require the assessors to give their opinion in writing to the chairman. He added it is the Court of Appeal's position stated in **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No.287 of 2017 (CAT unreported), that an omission to read the opinion of the assessors to the parties vitiated the proceedings of the tribunal.

He quoted part of that decision as follows-

*".....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 am in total agreement with the both parties and especially the respondent's advocate that consistently the Court of Appeal has held that an omission by the chairman of DLHT to read the opinion of the assessors to the parties vitiates the proceedings and the entire trial. It stated in **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble** Civil Appeal No. 197 of 2018 (CAT Unreported)-

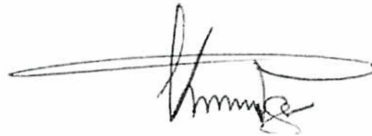
*"It is also on record that, though, the opinion of the assessors was not solicited and reflected in the Tribunal's proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the Tribunal does not show that the assessors were accorded the opportunity to give the said opinion, it is not clear as to how and at what stage the said opinion found their way in the Tribunal's judgment. **It is also our further view that, the said opinion was not availed and read in the presence of the parties before the said judgment was composed. On the strength of our previous decisions cited above, we are satisfied that** the pointed omissions and irregularities amounted to a fundamental procedural error that have occasioned a miscarriage of justice to the parties and had vitiated the proceedings and entire trial before the Tribunal, **as well as those of the first appellate court.**" (emphasis*

supplied)”

Given the above settled position of the law, I am of the considered opinion in the instant case, that the omission by chairman of the **DLHT** to invite assessors read the opinion to the parties vitiates its proceedings. Thus, I find the proceedings of the tribunal a nullity. I invoke my powers under section 43 of the **Land Disputes Courts Act**, Cap. 216 to quash the proceedings and set aside the judgment of the District Land and Housing Tribunal.

I order the appeal to be heard afresh before another chairman of the tribunal with different assessors. I find no party is to blame for this Court's order for trial *de novo*, hence each party shall bear its own costs.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

10/7/2020

COURT: Ruling delivered in the presence of both parties in person and in the presence Mr. Mahemba, Adv. for the respondent. B/C Ms. Tenga present.



J. R. Kahyoza

JUDGE

10/7/2020