

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

LAND APPEAL No 41 of 2020

*(Arising from Land Appeal No 232 of 2019 of District Land and Housing Tribunal for Mara
at Musoma Original from Application No 11 of 2018 from Nyasura ward tribunal)*

BHOKE MARWA..... APPELLANT
VERSUS

YONA WARWA RESPONDENT

RULING

13th July, 2020

Kahyoza, J.

The appeal came for hearing in the presence of the appellant and in the absence of the respondent. The record shows that the respondent was not dully served as he could not be traced. Under normal practice I would have adjourned the hearing to another date and ordered re-service of the notice of hearing to the respondent. I declined that urge and resolved to invited the appellant to address me on the propriety of the proceedings before the District Land and Housing Tribunal (the **DLHT**).

The **DLHT** proceedings depicted that the chairman of the tribunal did not read the opinion of the assessors to the parties before he delivered the judgment. Thus, the appeal was incompetent.

It is now established law that an incompetent proceedings, be it an appeal, application, etc, is incapable of adjournment, for the Court cannot adjourn or allow to withdraw what is incompetently before it. See **Ghati Methusela Vs. Matiko Marwa Mariba**, Civil Application No. 6 of 2006 (CAT unreported).

After declining to adjourn an incompetent appeal, I invited the appellant to address me on the effect of the chairman's omission to read the opinion of the assessors to the parties. The appellant had nothing substantial to tell me. She stated that she won the case before the ward tribunal and the **DLHT** reversed it. I expected such a contribution from the appellant because the appellant is a layperson and the issue raised was technical one.

It is trite law that once a chairman of the **DLHT** omits to invite the assessors to write and read their opinion to the parties, the omission is fatal and renders the trial nullity. It does not matter whether or not the assessors gave their opinion and the chairman considered the opinion in the judgment. The Court of Appeal has made that position clear in a number of its decisions, such as **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No.287 of 2017 (CAT unreported), **Edina Adam Kibona V Absolom Swebe** CIVIL APPEAL NO. 286 OF 2017 CAT (Unreported) and **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble** Civil Appeal No. 197 of 2018 (CAT Unreported) a few to mention.

In **Tubone Mwambeta v. Mbeya City Council**, (supra) the Court of Appeal insisted on the role of the Chairman to set the date for

the assessors to give their opinion in writing and read the same to the parties. The Court stated-


*"In view of the settled position of the law where the trial has to be 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.**"*

In the instant case, the chairman set a date for the assessors to give their opinion in writing, which was on the 27th January, 2020. On that day both parties entered appearance before the tribunal. Unfortunately, the record does not disclose whether or not the **DLHT** read the assessors' opinion to the parties. It is a principle of practice that court or tribunal proceedings speak for themselves. Thus, an appellate Court like this one, has no privilege to invite a trial magistrate or chairman to give an account of events before his court or tribunal on a particular day.

Having found that the **DLHT** omitted to read the opinion of the assessors to the parties, I find its proceedings and judgment incompetent. I invoke my powers of revision under section 43 of the **Land Disputes Courts Act**, [Cap. 216 R.E. 2020] to declare

proceedings and judgment of the **DLHT** a nullity. Consequently, I to set aside the judgment and quash the proceedings. I hereby order the appeal to be heard afresh before another chairman with a new set of assessors. Each party shall bear its own cost.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
13/7/2020

Court: Judgment delivered in the presence of the appellant and in the absence of the respondent. Each party shall bear its own costs. B/C Catherine Tenga present.



J. R. Kahyoza,
Judge
13/7/2020