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

AT MUSOMA

LAND REVISION NO. 7 OF 2020

(Arising from the Ruling of the High Court of Tanzania (Hon. Kahyoza, J.) in Miscl. Land Application No. 22 of 2019 and the decision of the District Land and Housing Tribunal of Tarime at Tarime in Land Application No. 22 of 2014)

MERYSIANA MATHEW ..... APPLICANT

VERSUS

MATHEW TURA ..... 1ST RESPONDENT
TABU MACHOTA ..... 2ND RESPONDENT

RULING

Date of Last Order: 15/05/2020
Date of Judgement: 08/07/2020

KISANYA, J.:

Marysiana Mathew filed Land Application No. 22 of 2014 before the District Land and Housing Tribunal for Mara at Musoma (the Tribunal). She requested the Tribunal to nullify the sale of matrimonial property to the 2nd Respondent on the ground that it was sold by the 1st Respondent without her consent. After hearing both parties, the tribunal denied the application the ground that, it lacked the jurisdiction to determine the marital status of the applicant.

As the applicant delayed to file her appeal against the Tribunal's decision, she preferred an application for extension of time to appeal out of time. This Court dismissed the applicant's application for being meritless. However, upon noting that there is irregularity which vitiated the proceedings of the Tribunal, the Court held as follows:

> *"The proceedings of the tribunal are ingrained with irregularities and if this Court does not do anything, after refusing to extend time, it will be tantamount to perpetuating them.*

Thus, pursuant to S. 43(3) of the Land Disputes Courts Act, I order the records to be recalled for the purposes of satisfying myself as to the correctness, legality or appropriateness of the decision of the tribunal."

Following that decision, the Tribunal's records were recalled and hence the present matter. The Court noted that the Chairman of the trial Tribunal sat with two assessors namely, Mr. Sagwayra and Mr. Babere. However, the proceedings do not show whether the assessors were invited to give their opinion and whether the same was given in the present of the parties. In this regard, parties were called upon to address on whether the assessors opinion was read or given as required by the law.

At the hearing of this matter, the applicant, 1st respondent and 2nd respondent appeared in persons. The applicant and the 1st respondent told the Court that the opinion of assessors was not read in their presence and that the assessors were not addressed to give their opinion. On the other hand, the 2nd respondent submitted that, the opinion of assessors was read on the date of judgement and that both assessors were present.

Having considered the evidence on record and the submission by the parties, I wish to state that, the issue raised by the Court is premised on the provisions section 23 (1) and (2) of the Land Disputes Courts [Cap. 216, R.E. 2002] which provides that, the District Land and Housing Tribunal is properly constituted by the Chairman and not less than two assessors who are required to give their opinion. The said section provides:

23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.

(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment."

In order to ensure that the above provision is complied with, the Chairman is duty bound to require every assessors present at the conclusion of hearing to give his opinion in writing, before composing his judgement. This is pursuant to regulation

19(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 which provides:

> *"(1) The Tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgement on the spot or reserve the judgement to be pronounced later;*
>
> *(2) Notwithstanding sub-regulation (1) the Chairman shall, before making his judgement, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili"*

Further, case law has interpreted the provisions of the Land Disputes Courts Act and its Regulations to the effect that, the opinion should be read in the presence of the parties. Also, the proceedings should show that the opinion is read out or given in the presence of the parties. This position was stated in **Tubone Mwambeta vs Mbeya City Council**, Civil Appeal No. 287 of 2017 CAT at Mbeya, (unreported), when the Court of Appeal held that:

> *"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 shown herein that, the Chairman of the Tribunal in the matter at hand sat with two assessors namely, Mr. Babere and Mr. Swagarya. However, upon conclusion of the hearing the case on 28.11.2018, the Chairman did not require the above named assessors to give their opinion. He went on to order that judgement would be delivered on 25/01/2019. Indeed, judgement was delivered on 25/01/2019 as scheduled and assessors are not in corum of 25/01/2019. The proceedings confirm that the assessors were not asked to give their opinion and that, the same was not read given in the

presence of the parties. The said irregularity vitiated the proceedings, judgement and decree issued by the District Land and Housing Tribunal.

I have noted that written opinion alleged to have been written by Mr. Babere and Swagarya is in the case file. However, since the proceedings do not show that the opinion was read in the presence of the parties, the purported opinion cannot cure the irregularity as held in **Edna Adam Kibona vs Absalom Swebe (Sheli),** Civil Appeal No. 286/2017, CAT at Mbeya (unreported) that:

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

The irregularity in the instant case goes to the root of the case because it suggests that the Tribunal was not properly constituted. Also, parties were denied the right to know opinion of assessors who heard their case.

For the aforesaid reasons, I am inclined to invoke the revisional powers of this Court to nullify the proceedings, quash and set aside the judgement and decree of the District Land and Housing Tribunal. The case file is remitted to the Tribunal for a fresh hearing of the application before another Chairperson and new assessors. Cost are not awarded because the irregularities were not caused by either party. Order accordingly.

Dated at MUSOMA this 8th day of July, 2020.

E. S. Kisanya
JUDGE
08/07/2020