

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC LAND APPEAL NO. 17/2018

*(Arising from Appeal No. 131/2016 of the District Land and Housing
Tribunal for Kagera at Bukoba Originating Land Application No.
15/2016 of Rwamishenye Ward Tribunal)*

FELICIANA MLAKI APPELLANT

VERSUS

HOSEA WILLIAM RESPONDENT

JUDGEMENT

4/3/2020 & 11/3/2020

BAHATI,J

This is an appeal against the decision of District Land and Housing Tribunal for Kagera (DLHT) in an appeal, Appeal No.131 of 2016. The decision of the DLHT was delivered on 22.02.2018. Aggrieved by the

decision of the District Land and Housing Tribunal for Kagera at Bukoba the appellant has raised four grounds of appeal before this Court that:

- 1. The Tribunal grossly erred in law and fact to reach a verdict that, the Ward Tribunal had no jurisdiction to entertain this case which was evaluated by a Ward Tribunal to be a border conflict measured 6 steps only.*
- 2. The Chairman grossly erred in law and fact for upholding assessor's opinion to rule the case while both assessors had conflicting opinion.*
- 3. The Tribunal erred in law and fact to depart from well evaluated judgment of the Ward Tribunal without justifiable legal reason.*
- 4. The Tribunal erred in law and fact for failure to deliver a judgment at all.*

A brief factual background of this appeal is that this appeal originated from Rwamishenye Ward Tribunal whereby Feliciano Mlaki sued Hosea William claiming that the latter had crossed and encroached over the suit land by planting banana plants. She alleged further that Hosea William is not her neighbor. At the Ward Tribunal the applicant (respondent herein) tendered the letter of sale and specified her property's boundaries and called witnesses. At the end, it was held in favour of Feliciano Mlaki. The respondent, Hosea William, was not satisfied and appealed to the DLHT where he received judgement in his

favour. Aggrieved by the decision of the DLHT, the appellant herein appealed to this court. Hence this appeal.

At the hearing before this Court, both parties entered appearance in person. The appellant in her brief address, while focusing on the 4th ground informed the court that the *Tribunal erred in law and fact for failure to deliver a judgment at all*, she submitted that in the decision of the District Land and Housing Tribunal (R.E. Assey, Chairman) delivered on 22/2/2018. There was no decision as to who won the case. According to her, the judgement was delivered in favour of both parties. Hence this appeal. She did not submit on the other grounds on the pretext that what is stated in respect of the 4th ground was clear and adequate.

On his part, the respondent had the same view that the judgement was entered in favour of nobody. Also he could not submit on the other grounds of appeal.

Having considered the submissions of both parties and also going through the entire record of this case, the main issue to be determined is whether there is judgement on board. Before determining the case, it is better to be guided by some provisions of the law.

Section 24 of the Land Disputes Courts Act, Cap.216 provides that,

“In reaching decisions the chairman shall take into account the opinion of the assessors but shall not be bound by it except that the Chairman shall in the judgement give reasons for differing with such opinion”.

Further, Order XX Rule 4 of the Civil Procedure Code, Cap. 33. R.E. 2002 provides that,

“ A judgement shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.”

According to these cited provisions, the question for determination is whether there was judgment at hand. In respect of page two of the judgement, the Chairman when observing on the Assessors he stated that, I quote;

Assessor One;

“ uamuzi wa baraza la ardhi la kata Rwamishenye ni sahihi kwa kumpa ushindi Feliciano Mlaki yaani hapa mrufaniwa Hosea William mleta rufaa hana haki pale anashindwa alipe gharama.”

Assessor Two;

“...Ushahidi uliotolewa aliyemuuzia una uzito. Mrufani ndiye mmiliki halali wa eneo bishaniwa. Gharama zimlalie mrufaniwa (Felician Mulaki).”

That I concur with their opinion and as such the appeal is hereby allowed with costs. It is so ordered.”

Sgd R.E Assey.” End of quote.

From this statement, it is undisputed fact that the Chairman of the District Land and Housing Tribunal did not give the decision to the parties. It is evident that the Chairman has not given a precise judgement. Either of the parties succeeded.


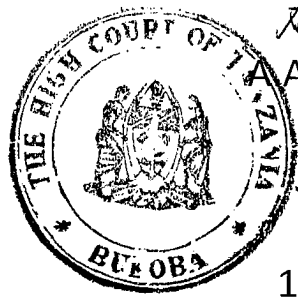
It is an established principle of law that a judgement shall contain a concise statement of the case, the points for determination and the reasons for the decision. Since the judgement appealed against is improper for not showing the parties who won the suit and giving the reasons for his decision is a nullity.

Having made those observation and findings, I am persuaded to and hereby say that, the decision of the District Land and Housing Tribunal delivered on 22/2/2018 is nullity. I am aware that the presiding Chairman of this suit is not there now. Hence, I further order an

expedited fresh hearing be conducted before a new Chairman of the District Land and Housing Tribunal with a distinct pair of assessors.

Each party to bear own cost under the present circumstances.

It is so ordered.


A BAHATI
JUDGE

11/3/2020

Date: 11.03.2020

Coram: Hon. A. A. Bahati – J

Appellant: Feliciana Mlaki (in person)

Respondent: Hosea William (in person)

B/Clerk: A. Kithama

Court: Judgment delivered in the presence of both Appellant and Respondent.


A.A BAHATI