

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**MISC LAND CASE APPEAL NO. 28 OF 2018**

(Arising from Land Application No. 9 of 2017 at District Land  
and Housing Tribunal for Kondoa at Kondoa)

**ALLY HUSSEIN KINALA ..... APPELLANT**

**VERSUS**

**1. HALIMA ATHUMAN**

**2. HASSAN ABDULRAHMAN } .....RESPONDENTS**

*14/9/2020 & 29/9/2020*

**JUDGMENT**

**MASAJU, J**

The Appellant, Ally Hussein Kinala, unsuccessfully sued the Respondents, Halima Athuman and Hassan Abdulrahman in the District Land and Housing Tribunal for Kondoa at Kondoa in Land Application No. 9 of 2017.

Aggrieved with the trial Tribunal's decision, the Appellant filed the appeal in the Court vide the Petition of Appeal which carries six (6) grounds of appeal.

At the hearing of the appeal on the 3<sup>rd</sup> day of August, 2020, the Appellant was represented by Mr. Samwel Mcharo, the learned counsel. The 1<sup>st</sup> Respondent appeared in person while the 2<sup>nd</sup> Respondent was represented by Mr. Yassin Hassan his legal representative duly appointed through a General power of Attorney.

Submitting in support of the appeal, the Appellant's learned counsel argued that, upon reading the record of proceedings, he had learned that there are two points of law to be considered by the Court apart from the six (6) grounds of appeal. The points of law are thus;

*"1. That the District Land and Housing Tribunal did receive the assessors opinion but the same are not reflected in the record of proceedings contrary to Sikudhan Magambo and Kirioni Richard Vs. Mohamed Roble (CAT) Civil Appeal No. 197 of 2018, Dar es Salaam Registry.*

*2. That, the 2<sup>nd</sup> Respondent lacked "locus standi." There was no special power of Attorney tendered before the Court. The one available is questionable if at all it was given by the 2<sup>nd</sup> Respondent."*

On their part the Respondents contested the entire appeal together with the two (2) raised points of law arguing that, assessors opinion were received in the trial Tribunal and that, they form part of the record of proceedings. The 2<sup>nd</sup> Respondent contested the 2<sup>nd</sup> raised point of law by submitting that, he has "*locus standi*" to prosecute the case both in the trial Tribunal and the Court, on the General Power of Attorney and that, the General Power of Attorney was duly registered and was received in the trial Tribunal.

The Court will not determine the merit of the appeal since the raised concern by the Appellant ought to dispose of the entire appeal. The trial Tribunal's records show the handwritten opinion of the two assessors. There is no record that the opinion were read to the parties before the Judgment of the trial Tribunal. The assessors opinion are only referred in the trial Tribunal's judgment. Regulation 19 (2) of the Land Disputes Court (The District land and Housing Tribunal) Regulations, 2003 provides,

*"19 (2) Notwithstanding sub regulation*

*(1) The chairman shall before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessors may give his opinion in Kiswahili."*

In the instant case, the trial Tribunal's proceedings does not reveal if really the assessors' opinion were read in the presence of the parties at the conclusion of hearing, prior to delivery of the judgment.

In the Case of **Tabora Mwambeta V. Mbeya City Council, Civil Appeal No. 287 of 2017 (Unreported)** it was decided, thus;

*"In view of the settled position of the law, where the trial has to be conducted with the aid of the assessor, 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 require every assessor present at the trial at the conclusion on 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."*

Thus, the Court finds a gross irregularity in the trial Tribunal's decision.

On the 2<sup>nd</sup> point of law on the "*locus standi*" of the 2<sup>nd</sup> Respondent, the original record of the trial Tribunal shows clearly that the 2<sup>nd</sup> Respondent duly appointed his son, one Yasini Hassan Abdulrahman through General Power of Attorney, filed in the trial Tribunal to represent him in all matters concerning the land in dispute. The General Power of Attorney was registered by the Registrar of Titles on the 24<sup>th</sup> day of August, 2017.

The Court finds the issue of "*locus standi*" as an afterthought. The Appellant ought to have raised it in the trial Tribunal. Neither does it appear in any of his grounds of appeal in the Court.

That said, the Court invokes its revisionary powers by virtue of section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216] to nullify and quash the decision and orders given by the trial Tribunal immediately upon the conclusion of the trial of the case setting the dates for delivery of judgment.

The trial Tribunal shall summon the parties together with the same Assessors who participated on the entire trial and were present at the conclusion of the trial before the same trial Tribunal Chairman. The assessors shall give their written, signed and dated opinion in the presence of the parties pursuant to Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunals) Regulations, 2003. The said written opinion by the Assessors shall be read over in the presence of the parties and then be made part of the original record of the trial Tribunal prior to the Chairman's giving the order as to when the judgment will be delivered. The sooner the trial Tribunal reconvenes the better for timely delivery of justice. The parties shall bear own costs.



  
GEORGE M. MASAJU

**JUDGE**

29/9/2020