

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPEAL NO 11 OF 2020

(From the District Land and Housing Tribunal for Kyela at Kyela in Land Application No. 31 of 2019. Originating from Ndobbo Ward Tribunal in Land Case No. 02 of 2019)

EVODIA FRANK.....APPELLANT

VERSUS

JOHAN MWAMLUTE.....RESPONDENT

JUDGEMENT

Date of Last Order : 13/08/2020
Date of Judgement: 01/10/2020

MONGELLA, J.

In the District Land and Housing Tribunal for Kyela at Kyela (the Tribunal), the appellant herein sought for extension of time within which to file an appeal out of time against a decision handed by Ndobbo Ward Tribunal. The application was denied by the Tribunal, hence this appeal against the said ruling. The appellant appeared in person while the respondent enjoyed legal services of Ms. Jenifer Biko, learned advocate. The matter was argued by written submissions.

Upon perusal of the court record, the court spotted a legal issue regarding involvement of assessors and ordered the parties to first address it on this issue before proceeding to the grounds of appeal. The order was

issued on 08th July 2020 in the presence of both parties and Ms. Zawadi Erasto, learned advocate, holding brief for Ms. Biko for the respondent. However, after going through the written submissions filed by both parties, I noticed that both parties did not address the court on this issue. This entails that both parties either deliberately or in forgetfulness forfeited their right to address the court on this issue. I shall nevertheless proceed to determine on the same.

Like I pointed out earlier, the proceedings do not indicate the fully participation of the Tribunal assessors. It appears from the Tribunal record that assessors were one Mr. Mwakitapilwa and one Mr. Gwankisa. On 8th December 2019, the Tribunal granted the prayer by the parties to argue the application by written submissions. On 13th January 2020 when the submissions were filed in the Tribunal, an order for ruling was issued, whereby the ruling was scheduled to be pronounced on 17th February 2020. No orders were given requiring the assessors to file their opinion in writing as required under the law and no opinion was filed and read over to the parties. The law under section 23 (2) of the Land Disputes Courts Act, Cap 216, R.E. 2019 provides for the composition of the Tribunal in all matters and for the opinion of assessors. It provides:

"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 addition, Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides:



"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..."

In my considered view, written submissions are a substitute of oral hearing which is said to be concluded after filing of the submissions. To this effect it was the duty of the Tribunal Chairman to cause the written submissions reach the Tribunal assessors for them to prepare and air their opinion before proceeding to compose the ruling. The omission to cause the Tribunal assessors air their opinion is a serious irregularity with an effect of vitiating the Tribunal proceedings and decision. This position has been settled in a number of decisions by the courts in this land. See: **Ameir Mbarak and Azania Bank Corp Ltd. v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 (unreported); **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No 287 of 2017 (unreported); and **S.D.A Church Keisangula v. Nyaikwabe Masare**, Civil Appeal No. 112 of 2015, just to mention a few.

Under the circumstances therefore, the proceedings and judgment of the Tribunal in this matter are hereby found to be a nullity for non-active involvement of assessors. They are consequently vitiated. The matter is ordered to be heard afresh in the Tribunal before another Chairman. Given the fact that the matter has been disposed on an issue raised by the court suo motu, I make no orders as to costs.

Dated at Mbeya on this 01st day of October 2020




L. M. MONGELLA
JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 01st day of October 2020 in the presence of the respondent and his advocate Ms. Jenifer Biko.


L. M. MONGELLA
JUDGE