

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

MISC. LAND APPEAL NO. 11 OF 2019

*(From the District Land and Housing Tribunal for Rungwe in Land Appeal
No. 04 of 2018. Originating from Land Case No. 15 of 2018 at Luteba Ward
Tribunal)*

SUZANA KIBASI.....APPELLANT

VERSUS

ASWILE K. MWANJELILE.....RESPONDENT

JUDGEMENT

Date of Hearing : 04/12/2019
Date of Judgement: 04/03/2020

MONGELLA, J.

Aggrieved by the decision of the District Land and Housing Tribunal (hereinafter referred to as Tribunal) the Appellant has appealed to this Court on four grounds of appeal. Both parties appeared in person and the appeal was argued orally.

During the hearing the Court raised a legal issue regarding the involvement of assessors in the Tribunal proceedings, but the parties could not address the Court on this issue. Since the issue touches the legality of the Tribunal Judgment I shall deliberate upon it accordingly.

While perusing the records of the Tribunal I noted in the Tribunal proceedings that assessors were not fully involved. The proceedings indicate that when parties were done with final submissions on 4th July 2018, the Hon. Chairman set a date for judgment to be on 31st July 2018 and ordered the assessors to render their opinion in time. Though in his judgment the Hon. Chairman purports to consider the opinion of assessors, it is not seen in the proceedings as to when the said opinion by assessors was filed in the Tribunal and when the same was read over to the parties before composition of the judgment as required under Regulation 19 (2) of the Land Disputes Courts (the District and Housing Tribunal) Regulation, 2003 and Section 23(1) and (2) of the Land Disputes Courts Act, Cap 216, R.E. 2002.

In the case of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 the Court of Appeal citing with approval the case of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (both unreported) held:

"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 meaningfully 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."

The Court held further that:

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

In the Tribunal case file, it appears that the written opinion of assessors were filed, but the records do not indicate if the assessors were invited to air their opinion in front of the parties or their written opinion read before the parties. The same were filed after a date for judgment was already fixed. Under the circumstances the judgement of the Tribunal is found to be improper. Practically, there is no proper judgment before this Court for it to entertain in appeal.

Following this observation I quash the proceedings and judgment of the Tribunal and order a re-trial before another Chairman and a different set of assessors. Due to the fact that the matter has been disposed only on an irregularity occasioned by the Tribunal and it is to be re-tried, I make no orders as to costs.


It is so ordered.

Dated at Mbeya on this 04th day of March 2020



L. M. Mongella
L. M. MONGELLA
JUDGE
04/03/2020

Court: Judgement delivered in Mbeya in Chambers on this 04th day of March 2020 in the presence of the Appellant appearing in person.


L. M. MONGELLA
JUDGE
04/03/2020