

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
MBEYA DISTRICT REGISTRY  
AT MBEYA  
MISC. LAND CASE APPEAL NO. 36 OF 2016**

*(Originated from Madibila Ward Tribunal Land Case No. 04 of 2014 and  
Mbeya District Land and Housing Tribunal, Land Appeal No. 126 of 2016)*

**LAURENT CHALAMILA** (Representative of Michael Chicho).....**APPELLANT**

**VERSUS**

**BALTAZAR LUSIGI**.....**RESPONDENT**

**JUDGMENT**

***Date of last order:***           10/03/2020

***Date of Judgment:***       17/03/2020

**NDUNGURU, J.**

The above named appellant standing at the representative capacity of Michael Chicho being aggrieved by the whole decision of the District Land and Housing Tribunal for Mbeya dated 12/7/2016 has appalled to this honourable court.

Briefly, the facts of the case which led to this appeal can be summarized as follows; that appellant successfully filed a suit against the respondent before Madibila Ward Tribunal, Land Case No. 04 of 2014 claiming for declaration that Michael Chicho is the lawful owner of

50 acres of land and that the same was allocated to him by Mahango Village council in 1994 and that the respondent be declared a trespasser to the suit land. That the Ward tribunal upon evidence from the disputants declared the appellant the lawful owner of the suit in dispute.

Aggrieved by the decision of the Ward tribunal, the respondent appealed to the District Land and Housing Tribunal for Mbeya at Mbeya. The District Land and Housing Tribunal reversed the decision of Madibila Ward tribunal by declaring the respondent in this appeal the lawful owner of the suit land. Dissatisfied, the appellant filed the present appeal impugning the decision of the District Land and Housing Tribunal.

In his memorandum of appeal the appellant has raised three grounds of appeal to wit;

- 1.The appellate tribunal misdirected itself for not examining the fabricated evidence from the respondent that the appellant was not allocated any piece of land in 1996.
- 2.The District Land and Housing Tribunal failed to identify that the respondent was one among Village Committee Members from Makunywa village Council which approved re allocation of 50 acres of land which were already cleared by the appellant in 1996.

3. That the Appellate tribunal failed to analyse the whole evidence brought in the trial Ward Tribunal which clearly shows that the appellant has right over the disputed land.

In this appeal, the appellant was represented by Mr. Mushokorwa learned senior counsel while the respondent was represented by Mr. Athuman Bamba learned advocate. This appeal was heard by way of written submission following the request of the parties to do.

After having gone through the proceedings of the District Land and Housing Tribunal and before embarking on dealing with the submission made by all parties to this appeal, and before starting discussing the grounds of appeal raised and the submission by the parties thereto, this court has noted some procedural irregularities committed by the Chairman when hearing of the appeal from the Ward tribunal on the role and duties of the Assessors though was not raised as a ground of appeal to this appeal.

I find it important to discuss them at this stage because the appellate court's role is not to bless the irregularities and illegalities committed by the lower court or tribunal. Secondly, the effects of those irregularities vitiate the proceedings and judgment but do not determine the rights of the parties.

To start with, let me point it out that the Ward tribunal and the District Land and Housing Tribunal are creatures of the statute and their composition or constitution is statutory. With the District Land and Housing Tribunal Section 23 of the Lands Disputes Courts Acts Cap 216 provides that:

- (1) *The District Land and Housing Tribunal established under Section 22 **shall be composed of one chairman and not less than two assessors.***
- (2) *The District Land and Housing Tribunal **shall duly be constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment'***

*[Emphasis added]*

More over under regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides that:

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

In the proceedings of the trial tribunal at page 11, the chairman of the trial tribunal after closing the respondent case proceeded to schedule the case for judgment date, he did not invite assessors to opine in respect of the case and that the opinion of the assessors be

availed to the tribunal before the judgment is composed so as to assist him in reaching into fair decision.

At the outset, I wish to restate that, composition of the tribunal and the role of assessors is the creature of the law. Therefore, it is the law which gives the assessors mandate to give opinion on the verdict before the chairman composes the decision. Their presence becomes valuable if they actively, effectively and fully involve in the proceedings before opining at the conclusion of the trial and before judgment is composed. Regulation 19 (2) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations.

The above being the position of law, the Chairman was required to invite the assessors to give their opinion before the composition of judgment and that the opinion of the assessors had to be known to the parties as well because they have the right to know before the judgment as a process of ensuring fair trial. Upon perusal of the record I have seen the opinion of the assessors attached therein, but the record being silent on whether the assessors were invited to give their opinion it is not clear on how such opinion found way to enter in the record such opinion must be looked at suspiciously. In my view the irregularity goes to the root of the matter and occasioned a failure of justice and there

was no fair trial because the parties have the right to know the opinion of the assessors at the conclusion of the trial before judgment.

See the decided court of appeal case, of **Edina Adam Kibona vs. Absalom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 and **Tubone Mwambeta vs. Mbeya City Council** , Civil Appeal No. 287 of 2017 Both (unreported).


In the premises, I hold that the irregularity is incurable as it goes to the root of the matter. Consequently, I hereby nullify the proceedings and judgment of the trial tribunal. I further order expedited retrial before Tribunal presided over by another Chairman and the new set of the assessors if the parties are still interested on the matter.

I found it wastage of time to labour on the grounds of appeal as well the submission of the parties because the above discussed irregularity has sufficed to dispose of the appeal.

I make no order as to the costs on the ground that the parties had no hands towards such misdeed committed by the tribunal.

It is so ordered.



  
**D. B. NDUNGURU**  
**JUDGE**  
17/03/2020

**Date:** 17/03/2020

**Coram:** D. B. Ndunguru, J

**Appellant:** Absent


**For the Appellant:** Absent

**Respondent:** Present

**B/C:** M. Mihayo

**Court:** Judgment has been delivered today in the presence of the respondent and in the absence of the appellant.



  
**D. B. NDUNGURU**  
**JUDGE**  
17/03/2020

Right of Appeal explained.