

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND CASE APPEAL NO. 76 OF 2018**

**IBRAHIM KIBAMBI.....APPELLANT**

***VERSUS***

**GENERAL MANAGER KCU (1990).....RESPONDENT**

**JUDGMENT**

*Date of last order 27/11/2020*

*Date of Ruling 11/12/2020*

***Kilekamajenga, J.***

The appellant, after being aggrieved with the decision of the District Land and Housing Tribunal for Kagera at Bukoba, appealed to this Honourable Court armed with eight grounds of appeal thus:

- 1. That, the trial District Land and Housing Tribunal grossly erred in law and facts by hearing and determining the application while the respondent was not clothed with locus standi and for being unknown creature in the eyes of the law;*
- 2. That, the trial learned chairman grossly erred in law and facts for failure to note that the respondent who initiated the matter before the trial tribunal was not appointed by the Board of Directors of Kagera Co-operative Union (1990) Ltd to sue the appellant;*
- 3. That, the Hon. Chairman erred in law and facts to admit, hear and determine the application while the respondent did not seek and*



*obtain consent of (sic) Registrar of Cooperative Societies before instituting the case;*

- 4. That, the trial chairman grossly erred in law by rejecting appellant's documents as exhibits without follow (sic) proper procedure;*
- 5. That, the trial Hon. Chairman erred in law and facts for failure to take into account opinion of the assessors and give reasons for differing with such opinion which was in favour of the appellant;*
- 6. That, the trial learned chairman greatly erred in law and facts for dismissing counter claim raised by the appellant while all evidence tendered by the appellant proved the claim;*
- 7. That, the trial tribunal erred in law and in fact for basing its findings on the contradictory evidence of the respondent and thereby pronouncing contradicting judgment against the weight of evidence;*
- 8. That, in totality the proceedings of the District Land and Housing Tribunal are nullity and tainted with illegality.*

The appeal was finally called for hearing, the appellant was present and represented by the learned advocate, Mr. Mwita Makabe whereas the respondent enjoyed the legal services of the learned advocate, Mr. Aaron Kabunga. In the oral submission, the counsel for the appellant argued the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> simultaneously; he however abandoned the 4<sup>th</sup> ground. He argued the 6<sup>th</sup> and 7<sup>th</sup> grounds simultaneously and finally the 8<sup>th</sup> ground.

On the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> grounds, Mr. Makabe submitted that the respondent has no *locus standi* to sue because is not the land lord. The lease agreement which forms the base of this dispute was entered between KCU (1990) LTD and Kamtech Enterprises. The person who was supposed to sue in this case was KCU (1990) LTD who is the owner of the building rented to the tenant. This is in line with section 35 of the Corporative Societies Act of 2013, GN No. 5. He insisted that the General Manager KCU (1990) was not an appropriate person to sue.

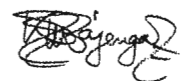
On the 5<sup>th</sup> ground, Mr. Makabe argued that the trial chairman failed to consider the opinion of assessors. The chairman also failed to give reasons for departing from the opinion of assessors. The law requires the chairman to invite assessors to opine in writing. The opinions should be read to the parties and such opinions should appear in the records. According to the typed proceedings, the opinions of assessors are missing something which is contrary to section to **section 24 of the Land Disputes Courts Act, Cap. 216 RE 2019**. He cemented his argument with the case of **Elias Alphonse v. Idrisa Salimu, Misc. Land Case Appeal No. 36/2012; Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Case No. 286**



**of 2017, CAT at Mbeya and YS Chawalla and Co. Ltd v. Dr. Abbas Teherali, Civil Appeal No. 70 of 2017, CAT at Tanga.**

On the 6<sup>th</sup> and 7<sup>th</sup> ground, Mr. Makabe submitted that the trial tribunal failed to consider the evidence especially the evidence concerning the counter claim. The appellant's evidence was supported by DW2. On the 8<sup>th</sup> ground, the counsel for the appellant argued that when the hearing commenced, the chairman of the tribunal was Mr. Chenya, the assessors were Anamary and Makwaya. Later, the hearing continued under the chairmanship of Mogassa and the assessors were Muyaga and Bwahama. Therefore, there was a new set of assessors something which is contrary to the law. He finally urged the Court to allow the appeal.

In response, the counsel for the respondent argued that the argument that the respondent lacks locus standi has no merit because KCU (1990) Ltd is an institution while the General Manager of KCU is the principal officer. Furthermore, the appellant knew the nature of the case and defended it and there is no possibility that the appellant has been affected. Based on the principle on substantive justice, the appellant was supposed to show how he was affected. On the fifth ground, Mr. Kabunga submitted that the



argument that the chairman did not consider the opinion of assessors has no merit. The chairman gave orders for the assessors to give their opinions. The opinions were in favour of the appellant; the trial chairman stated how he departed from the opinion of assessors.

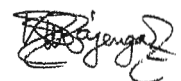
Mr. Kabunga further argued that there was no agreement to renovate the respondent's house hence the appellant's claim was rightly dismissed. On the other hand, the appellant has not been paying rent and he owes the respondent Tshs. 16,000,000/=. He further insisted that the assessors gave their opinion and this is not an illegality. He fortified his argument with the case of **Charles Chama and two others v. Regional Manager TRA and three others, Civil Appeal No. 224 of 2018**, CAT at Bukoba. He submitted further that the cases submitted by the counsel for the appellant are distinguishable to this case. He finally urged the Court to allow the appeal.

In the rejoinder, Mr. Makabe insisted that KCU had the claim against the appellant and not the Manager. The General Manager did not sue as the principal officer. Generally, the General Manager was not a party in the lease agreement. Retaining the General Manager in the case will occasion



miscarriage of justice during execution of the orders of the court. He insisted that opinions of assessors were not recorded nor read to the parties. Also, the trial chairman never showed reasons for departing from the opinions of assessors. He finally reiterated the prayer to allow the appeal with costs.

In this case, among the eight grounds of appeal, there are two grounds which I believe will dispose of the appeal. First, the counsel for the appellant vehemently argued that the respondent had no locus standi to sue the appellant. I have carefully perused the file and observed the following: The claim in this dispute is hinged on the lease agreement which was signed on 16<sup>th</sup> May 1997. The parties to the lease agreement were **KCU (1990) LTD** and **KAMTECH ENTERPRISES**. However, based on this lease agreement, the respondent instituted a case against the appellant in the name of General Manager KCU (1990) something which, in my view, was not proper. Though the counsel for the appellant argued that the respondent had no locus standi in this case, I equally find that the appellant was also not a proper party because he is not a party in the lease agreement. Therefore, based on the foundation of the case at hand, both the appellant and respondent seems to have no *locus standi* because their

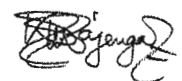


names do not appear in the agreement which is the genesis of this dispute. Based on this point alone, I find the instant appeal has merit and it is enough at this stage to allow it. However, I wish to move to another point which is worthy for consideration.

Let me address the issue of composition of the tribunal which was hinted by the counsel for the appellant. Under the law, the District Land and Housing Tribunal is always fully constituted when presided by a chairman and not less than two assessors. This is in line with **section 23(1) of the District Land and Housing Tribunal, Cap. 216 RE 2019**. The section provides:

*'The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.'*

In the instant case, the issues were framed by chairman R.L. Chenya and the assessors were Anamary and Makwaya. However, the hearing commenced in the presence of R.L. Chenya (chairman) and the assessors were Muyaga and Bwahama. There was a need to maintain the consistence in the pair of assessors to ensure that they grasp the issues in line with the



evidence adduced. The change of assessors after the issues were framed was not proper. Furthermore, before composing the judgment, the chairman was supposed to require opinions from assessors. **Section 24 of the Land Disputes Courts Act** 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 judgment give reasons for differing with such opinion.'*

The above provision of the law is fortified further under **Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** which provides that:

*'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 assessor may give his opinion in Kiswahili.'*

Under the law, assessors' opinions must be put in writing. In the instant case, on 26<sup>th</sup> June 2018, the chairman ordered the assessors to record their opinions. On 01<sup>st</sup> August 2018, the chairman simply noted that the assessors' opinions were in favour of the respondent. However, such opinions do not appear anywhere in the file. In my view, this was another



anomaly that affected the proceedings of the trial tribunal. Based on the above reasoning, I find the appeal to have merit and it is hereby allowed. I hereby nullify the proceedings of the trial tribunal because the case was filed by and against the improper parties. The parties may wish to commence another case with proper parties. No order as to costs.

**DATED at BUKOBA** this 11<sup>th</sup> Day of December, 2020.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**11/12/2020**

**Court:**

Judgement delivered this 11<sup>th</sup> December 2020 in the presence of the appellant present in person and the counsel for the appellant, Miss Pili Hussein and the counsel for the respondent, Mr. Frank John (Adv). Right of appeal explained to the parties.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**11/12/2020**

