

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

LAND APPEAL NO 20 OF 2019

*(Arising from the appellate decision of the District Land and Housing Tribunal of Tarime in Land
Case No 120 of 2017)*

MARWA MAGACHA BUNYIGEAPPELLANT

Versus

MWITA MEGANGO MASERO RESPONDENTS

RULING

19th March , 2020

Kahyoza, J.

Marwa Magacha Bunyige sued Mwita Megango also referred to as Mwita Megango Masero in District Land and Housing Tribunal for Tarime at Tarime. Marwa Magacha Bunyige prayed for a declaration that he is a legal owner of the land in dispute, for vacant possession and for a permanent injunction to restrain Mwita Megango from trespassing the disputed land.

Marwa Magacha Bunyige lost the matter and appealed to this Court. He advanced six grounds of appeal. On the date fixed for hearing, I found out that the Chairman of the District Land and Housing Tribunal (**DLHT**) did not cause the written opinion of assessors to be read to the parties. The Chairman heard the evidence of the parties and on the date the evidence was concluded, he proceeded to fix a judgment date. The Chairman did not require the assessors to submit and their written opinion and require them to read them in the presence of the parties. I invited the appellant and the respondent's advocate to address me on the effect of the chairman's failure

to cause the opinion of the assessors to be read in the presence of the parties.

The appellant confirmed that it is true that the opinion of the assessors was not read to them and that he became aware of their opinion when he obtained a copy of the ruling. However, he submitted that he, being a layperson, did not know the repercussion of the omission by the Chairman to read the opinion of the assessors to them.

The respondent's advocate submitted that if, the proceedings do not show that the opinion of the assessors were read to the parties, the proceedings must be quashed.

The Chairman of the District Land and Housing Tribunal heard the Land Application with aid of assessors as required by the law. At the conclusion of the hearing on the 15th January 2019, the Chairman fixed a date for judgment. The judgment was fixed on 28th March, 2019. The record bear testimony that the chairman did not fix a date for the assessors to give their opinion in writing and to read them in the presence of the parties. The record however, also contains written opinion of the assessors of one **Grace N. Monge** and **Naftali Mwangwa**. It is also on the record that Chairman considered the opinion and resolved to disagree with the assessors who gave the opinion to the effect that the suit land belonged to the appellant. He decided in favour of the respondent.

The only drawback is the that the chairman did not call the upon the assessors to submit written and opinion and cause the same to be read to the parties. The District Land and Housing Tribunal is composed of a chairman and not less than two assessors as provided with section 23 (1) of the **Land Disputes Courts Act**, [Cap 216 R.E. 2002] (Cap. 216. Before the tribunal delivers its judgment, the chairman has to require assessors who sat with him to give opinion. Section 23 (2) provides as follows: -

23.(1)

(2) *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 judgement.*

(3)

The assessors are required give opinion in writing as provided by regulation 19(2) of the **Land Disputes Courts Act (District Land and Housing Tribunal) Regulations**, 2002 G.N. 174/2003. The regulation states that:-

“Notwithstanding sub-regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of the of the hearing to give his opinion in writing and the assessor may give his opinion in Kishwahili.”

In the instant case, the assessors gave their opinion in writing as per the law despite the fact, they were not called upon to so. It has been pointed out that the only disquiet is that the Chairman did not call upon the assessors to read the writing opinion in the presence of parties. The chairman’s act transgressed the clear holding of the Court of Appeal in **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No.287 of 2017(unreported) that **it was very important for the Chairman to call upon the assessors to give their opinion in writing and read the same to the parties.** The Court of Appeal stated as follows: -

"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 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.***”

A similar position was held in **Edina Adam Kibona V Absolom Swebe Civil Appeal No .286 of 2017 CAT (Unreported)** where the Court of Appeal reaffirmed its position that failure to call upon the assessors to give opinion and to let the parties to know the contents of the assessors’ opinion was a disastrous defect. The Court of Appeal stated: -

*“We wish to recap at this stage that the trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of evidence, it terms of Regulation19(2) of the Regulations, the Chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. **It may be in Kiswahili. That opinion must be in the record and must be read to the parties before the judgment is composed.***

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 view of the fact that their cord does not show that the assessors were required to give them, we fail to understand how and at what stage they found their way in 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 have no useful purpose.”

Given the above position of the law, I am of the firm view the District Land and Housing Tribunal failed to keenly involve the assessors while hearing the current matter. Thus, it defied clear provisions of the **section 23 of the Land Disputes Courts Act, Cap 216 (R.E. 2002)** and **regulation 19 of the Land Disputes Courts (District Land and Housing Tribunal) Regulations G. N. 174/2003**. For that reason, the proceedings and the judgment were a nullity. Consequently, the proceedings are quashed and the judgment set aside. I direct the appeal to be heard afresh before another Chairman and with a new set of assessors.

Each party shall bear its costs as the ground for retrial was caused by District Land and Housing Tribunal.

It is ordered accordingly.



A handwritten signature in black ink, belonging to J. R. Kahyoza, is positioned above the printed name and title.

J. R. Kahyoza

JUDGE

19/3/2020

Court: Ruling delivered in the presence of the appellant in person and the respondent's advocate Mr. C. Waikama. B/C Mr. Charles present.

A second handwritten signature in black ink, identical to the one above, is positioned above the printed name and title.

J. R. Kahyoza

JUDGE

19/3/2020