

**IN THE HIGH COURT OF TANZANIA  
MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 3 OF 2019**

*(Arising from the Land Application No. 68 of 2017 before the District Land  
and Housing Tribunal of Mara at Musoma)*

**GHATI WARIOBA ..... APPELLANT**

**VERSUS**

**ANASTAZIA WARIOBA..... RESPONDENT**

**JUDGEMENT**

10<sup>th</sup> and 20<sup>th</sup> March, 2020

**KISANYA, J.:**

In the District Land and Housing and Housing Tribunal for Mara at Musoma (hereinafter referred to as "the Tribunal"), the appellant filed an application claiming ownership of a piece of land located at Riaminingo hamlet, Nyakanga Village within Butiama District (hereinafter referred to as "the suit land"). Five witnesses were called to prove the appellant's claims while three witnesses were called by the respondent. After hearing both parties, the application was dismissed with costs on the ground that it had been filed out of time. Consequently, the respondent was declared the lawful owner of the suit land.

Aggrieved, the appellant has come to this Court by way of appeal, on the following grounds:

- 1. THAT, the trial Honuorable Chairman erred in law to disregards the Appellant's evidence which shows that the Respondent encroached into the land of the Appellant.*
- 2. THAT, the trial Court (sic) wrongly joined the Respondent in the proceedings without being appointed administrator of the deceased estate of one Marwa Warioba who was the original Respondent in the main case.*
- 3. THAT, the learned Chairperson failed to evaluate properly the evidence on record and as a result he reached a wrong conclusion that the Respondent is the lawful owner of the disputed land.*

When this matter was called on for hearing before me, Mr. Cosmas Tuthuru, learned advocate, appeared for the appellant who was also present in person. On the other hand, the respondent appeared in person, legally unrepresented.

In his submission, the learned counsel argued that, upon reading the judgement and proceedings of the Tribunal, he had noted that opinion of assessors was taken and reflected in the judgement. The learned counsel submitted that this omission contravened the provisions of regulation 19(1) and (2) of the Land Disputes Courts Regulation, 2003. Mr. Tuthuru argued further that, the proceedings before the Tribunal were vitiated by the failure to take and consider opinion of assessors. Citing the case of *Edina Adam Kibona vs Absolom Swebe (Sheli)*, Civil Appeal No. 286 of 2017, Court of Appeal at Mbeya, Mr. Tuthuru argued that it is unsafe to assume that the opinion of was given. Therefore, the learned counsel found no need of addressing other grounds of appeal. He urged this Court to nullify the judgement and proceedings of the Tribunal without costs to any party.

In response, the respondent submitted that opinion of assessors was given before judgement and that the case ended in her favour.

After going through the proceedings, judgement and submission by both parties, the main issue is whether the Tribunal was properly constituted in determining for application. Pursuant to section 23 (1) and (2) of the Land Disputes Courts [Cap. 216, R.E. 2002] as amended, the District Land and Housing Tribunal is properly constituted if it is composed by the Chairman and not less than two assessors. After the conclusion of hearing, assessors are required to give their opinion before the Chairman composes the judgement. Section 23(1) and (2) reads:

*"23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.*

*(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 judgment."*

Furthermore, regulation 19(1) and (2) of the Land Disputes Court Regulations, 2003 requires the Chairman to ensure that each assessor present at the conclusion of hearing, gives his opinion in writing. Regulation 19(1) and (2) is reproduced hereunder for easy of reference.

*"(1) The Tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgement on the spot or reserve the judgement to be pronounced later;*

*(2) Notwithstanding sub-regulation (1) the Chairman shall, before making his judgement, require every assessor present at the conclusion of hearing*

*to give his opinion in writing and the assessor may give his opinion in Kiswahili"*

It is now settled that, the opinion of assessors should be given before judgement in the presence of the parties. To ensure compliance with the law, the proceedings should show that the opinion of assessors has been read in the presence of the parties. This position has been stated by the Court of Appeal in several cases. For instance in **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017, Criminal Appeal No. 164 of 2015 (unreported), the Court of Appeal held as that:

*"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 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."*

Also, in the case of **Edina Adam Kibona** (supra) cited Mr Kuthru, the Court of Appeal held that:

*".... In terms of Regulation 19(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 record and must be read to the parties before the judgement is composed.** (emphasize is mine)"*

The proceedings in the matter hand show that, the respondent closed his case on 27<sup>th</sup> November 2018. Thereafter, the Tribunal fixed 25<sup>th</sup> January, 2019 as the date of judgement. Indeed, the judgement was delivered on 25<sup>th</sup> January, 2019 in the presence of the parties. The Corum does not show the assessors who were present on the date of judgement. I have noted that written opinion of two assessors is in the file. However, as rightly submitted by Mr. Tuthuru, the said opinion is not reflected in the judgement.

Since the trial Chairman did not address the assessors to give their opinion and as the proceedings do not show that the opinion was not read over to the parties, it is not known as to how and when the purported opinion formed part of the proceedings. Therefore, the written opinion filed contrary to the law has no useful purpose as held in **Edina Adam Kibona** (*supra*) that:


*"For 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 judgement. However, in view of the fact that the record does not show that the assessors were required 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 judgement was composed, the same has no useful purpose."*

In light of the above, the omission by the trial Chairman to take opinion of assessors in the presence of the parties contravened the law. Parties were entitled to know the opinion of assessors after conclusion of hearing. In such a case, the Tribunal was not properly constituted in determining the matter. This irregularity occasioned failure of justice. Therefore, I agree with the Mr. Tuthuru that, the said irregularity vitiated the whole proceedings before the Tribunal.

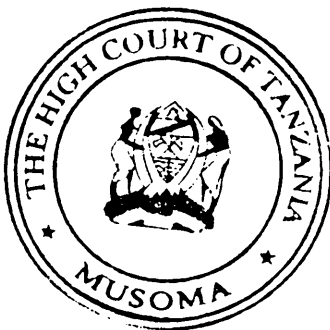
In view thereof, I invoke the revisional power vested in this Court by section 43 of the Land Disputes Courts Act [Cap. 216, R.E. 2002] to quash proceedings, judgement and decree of the District Land and Housing Tribunal. If the appellant is still interested to pursue this matter, she may institute a fresh application before the Tribunal. In the event a fresh application is filed, it should be heard expeditiously by new Chairman and another set of assessors. I make no order as to costs because the irregularity was not caused by the respondent.

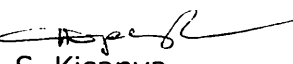
It is so ordered.

Dated at **MUSOMA** this **20<sup>th</sup>** day of **March, 2020**.

  
E. S. Kisanya  
**JUDGE**  
**20/3/2020**

**Court:** Judgement delivered this **20<sup>th</sup>** day of **March, 2020** in the presence of the Applicant and the Respondent.



  
E. S. Kisanya  
**JUDGE**  
**20/3/2020**