

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
LAND APPEAL NO 35 OF 2019

NYABURUMA MASAKA_____ **APPELLANT**

VERSUS

SALEHE WAMBURA_____ **RESPONDENT**

(Arising from the Decision and Orders of the District Land and Housing Tribunal for Mara at Musoma, Hon. Kitungulu, Chairman, in Land Application No. 164 of 2017 dated 26.09.2019)

RULING

GALEBA, J.

In this appeal, when I was preparing for hearing I noted that on 10.09.2019, as the Tribunal had fully heard evidence and visited the ***locus in quo***, it adjourned the matter for receiving opinion of assessors. The opinion was to be received on 26.09.2019.

The original record of the tribunal of that day is the following;

"Date 26/9/2019
Kitungulu, E. Chairman
T/ASS
Applicant-prest
Respondent- prest
T/C; Pude"

In other words the record of the tribunal on that day is quiet as to what transpired in the tribunal. But according to the judgment,

26.09.2019 it is when the judgment challenged was delivered. That, to me indicated that before judgment the tribunal did not receive any opinion from assessors as required by **Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2002 GN 174 of 2003 (the Regulations)** because the day that the judgment was delivered had been set aside for the assessors to give their opinion.

So when this appeal came up for hearing today I put the same query to the appellant who was present, she stated that on 26.09.2019 the assessors were not there but the opinion was read by the chairman himself and thereafter he delivered the judgment.

After reviewing the records available and hearing the appellant, I directed that the record of the District Land and Housing Tribunal be remitted to that tribunal for retrial of the dispute between the parties with a promise that I will give reasons for that order in a short ruling, I am now giving.

I have considered the record of the District Land and Housing Tribunal dated 10.09.2019 and 26.09.2019 with the confirmation of the appellant that no opinion of assessors was given by them to the chairman before he could compose the judgment. It is the opinion of this Court that, that offended **regulation 19(2) of the Regulations and section 23(2) of the Land Disputes Courts Act [Cap 216 RE 2002]** (the Land Disputes Act) because the composition of the District Land

and Housing Tribunal is both the chairperson and assessors. Section 23(2) of the Land Disputes Courts Act;-

"23(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."

In this case, it appears they were called upon to prepare their opinion in writing, but what is missing is how it reached the records of the tribunal. This is so because in our case, there is no record that the assessors gave their opinion to the chairman, if at all they gave it to him.

In **CIVIL APPEAL NO 286 of 2017 EDINA ADAM KIBONA VERSUS ABSOLOM SWEBE (SHELI) COURT OF APPEAL (UNREPORTED)** the Court of Appeal of Tanzania held at page 6 as follows;

"We wish to recap at this stage that in trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate at the conclusion of evidence, 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 the record and must be read to the parties before the judgment is composed."

In the above case after finding that the chairman did not get opinion as required by regulation 19(2) of the regulations, that Court quashed the proceedings and ordered a trial **de novo** of the matter before a different chairman and a different set of assessors.

Based on the above findings from the appellant and the records of the tribunal, this Court makes the following orders;

- i) The proceedings in Land Application No. 164 of 2017 are hereby quashed and the resultant judgment is set aside and nullified.
- ii) This appeal is hereby struck out for being incompetent.
- iii) The Deputy Registrar of this Court is directed to remit the record of the trial tribunal to the attention of the chairman in charge of the District Land and Housing Tribunal for Mara for the latter to appoint a chairman and assessors to rehear the appeal from the beginning.
- iv) For avoidance of doubt, the chairman and assessors who participated in the nullified proceedings may sit in the retrial ordered.
- v) Each party shall bear his own costs.

It is so ordered.



Z. N. Galeba
JUDGE
20.04.2020