

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
LAND APPEAL CASE NO 44 OF 2019

WIGESA MATENGA_____ **APPELLANT**

VERSUS

KIROBE MASIRORI_____ **RESPONDENT**

(Arising from the Decision and Orders of the District Land and Housing Tribunal for Mara at Musoma, Hon. Kitungulu, Chairman, in Land Appeal No. 243 of 2018 dated 21.06.2019)

RULING

GALEBA, J.

When I was preparing for hearing of this appeal, I spotted something that caught my attention. The appeal before the District Land and Housing Tribunal was heard on 23.05.2019 and the matter was straight adjourned for judgment to 21.06.2019. I noted that it is possible that the assessors did not give their opinion to the chairperson 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)**. Although the proceedings that came to this Court are not typed but I also noted that on 21.06.2019 the

record shows that no assessor was there and even parties were absent. So when this appeal came up for hearing today I put the same matter to the parties who both confirmed that after the hearing, they were not called on any other session between 23.05.2019 and 21.06.2019 for the chairman to receive opinion of assessors. After hearing parties, I directed that the matter shall be remitted to the District Land and Housing Tribunal and promised to give reasons in a somewhat detailing ruling later in the day. Here is the ruling containing the reasoning behind remitting the matter to the tribunal for rehearing.

I have considered the record of the District Land and Housing Tribunal dated 23.05.2019 and also the confirmation of parties that on that day they were present and the matter was adjourned for judgment and not for the tribunal to receive opinion of assessors. It is the holding of this Court that, that is offensive of **regulation 19(2) of the Regulations and section 23(1) 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 the assessors.

The law is that for any judgment of the District Land and Housing Tribunal to be a lawful judgment, it must emanate from proceedings in which both components of the Tribunal that is a chairperson on one hand and the assessors on the other, participated.

In our case, in the tribunal it is not known how and when the assessors gave their opinion to the chairman, if at all they did. The opinion of assessors must be given to the presiding chairman before the latter can compose a judgment of the Tribunal. That is as per regulation 19(2) of the Regulations which provides that: -

“(2) 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.”

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.”

The Court of appeal held that omission to receive opinion of assessors in the presence of parties was a fatal irregularity. In the above case of **EDINA KIBONA** after finding that the chairman did not seek opinion of assessors and reduce it in writing as required by regulation 19(2) of the regulations, as it is in this case, that Court quashed the proceedings and ordered a rehearing of the matter.

Based on the above discussion and findings from both parties, this Court makes the following orders;

- i) The proceedings in Land Appeal No. 243 of 2018 are hereby quashed and nullified and the resultant judgment from which this appeal emanates is set aside.
- 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