

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

LAND APPEAL NO 11 OF 2019

*(Arising from decision of the District Land and Housing Tribunal of Musoma at
Musoma in Land Application No 171 of 2017)*

DAMAS NYAKIA
(Administrator of the Estate } **APPELLANT**
of Maningi Magesa)

Versus

ATHONY JOSEPH MUGETA **RESPONDENT**

RULING

29th April & 22nd May, 2020

Kahyoza, J

The dispute involving the parties to this appeal is simple but tricky. The Court is called upon to determine how the deceased wished her property to be administered after her demise. **Maningi Magesa**, the deceased was married to three different men at different times. She was lucky to get children with all the three men. She died intestate. During her life time, she managed to acquire land, the epicenter of the dispute. There are competing versions on how she acquired the land. One version is that, she was given the disputed land by her mother and another one is that, she acquired the land together with the last man she cohabited with.

After her death of **Maningi Magesa**, the appellant applied and was duly appointed to administer the deceased's estate. In his struggle to administer the estate, the appellant stumbled on the

respondent's objection that the deceased transferred the house to him before her demise. Thus, there was nothing to administer.

The appellant instituted a suit before the District Land Housing Tribunal (the tribunal) seeking a declaration that the suit land was part of the deceased's estate. He lost the suit. Undaunted, he has appealed to this Court. The appellant adduced two grounds of appeal. The parties argued the appeal. While composing the judgment, I found out that the tribunal did not read the assessors' opinion to the parties before it delivered its judgment. I called upon the parties to address the Court on that issue.

The appellant submitted that the chairman did neither set a date for the assessors to read the opinion nor read the assessors' opinion to them. He added that he did not know the effect of omitting reading the opinion.

The respondent, on the other hand stated that the opinion of the assessors was read as part of the judgment.

It is settled that the DLHT is properly composed when it sits with the 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. Section 23 provides as follows: -

23.(1) The District Land and Housing Tribunal established under section 22 shall be composed of one 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 judgement.

(3) Notwithstanding the provisions of sub-section (2), if in the

course of any proceedings before the Tribunal either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member (if any) may continue and conclude the proceedings notwithstanding such absence.

The record of proceedings depicts that the **DLHT** sat with two assessors, who were Mrs. P Milambo and Mr. Matiko. The two assessors composed their written opinion and filed the same with the tribunal on the 20th February, 2019 and 13th February, 2019 respectively. The assessors did so in compliance with regulation 19(2) of the **Land Disputes Courts Act (District Land and Housing Tribunal) Regulations, 2002, G.N. 174/2003**. The record further shows that, the chairman of the tribunal did not invite the assessors to write their opinion and set a date for reading the opinion to the parties. The regulation {**19(2)**} states-

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

It is evident from the tribunal's record that, after the defence closed its case on the 22nd January, 2019, the chairman set date for delivering the judgment, which was on the 21st February, 2019. On that date, the tribunal adjourned the judgment as the chairman had yet composed it. He fixed another date of delivering the judgment on the 17th March, 2019, only to deliver it on the 22nd March, 2019. Thus, the chairman delivered the judgment without inviting the assessors to read the opinion in the presence of the parties.

It is now settled that, once a chairman of the tribunal flops to

invite the assessors to write and read their opinion to the parties, that omission vitiates the trial as it renders it a trial without assessors. It does not matter whether or not the assessors wrote their opinion and the chairman considered them while preparing the judgment. This stance has been taken by the Court of Appeal in number of its decisions. See **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No.287 of 2017 (CAT unreported), **Edina Adam Kibona V Absolom Swebe** CIVIL APPEAL NO. 286 OF 2017 CAT (Unreported) and **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble** Civil Appeal No. 197 of 2018 (CAT Unreported) a few to mention.

In **Tubone Mwambeta v. Mbeya City Council**, (supra) the Court of Appeal held it is 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 stated as follows: -

*"In view of the settled position of the law where the trial has to be 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.**"*

In **Edina Adam Kibona V Absolom Swebe** (supra) the Court of Appeal, while maintaining its position stated in **Tubone Mwambeta v. Mbeya City Council**, held that if the

chairman omits to invite the assessors to read the opinion to the parties it is immaterial that he considered the opinion in his judgment. It stated that

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 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.

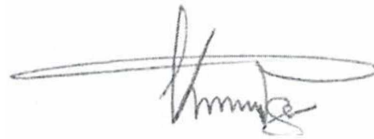
For the avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in view of the fact that the record does not show that the assessors 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.” (emphasis added)

In the upshot, I find that the District Land and Housing Tribunal omitted to actively involve the assessors, in violating the 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**. The omission is fatal and vitiates the proceedings, rendering it a nullity.

Consequently, I-

- a) strike out the appeal, quash the proceedings and set aside the judgment of the tribunal;
- b) direct the application to be heard afresh immediately, before another Chairman and with a new set of assessors; and
- c) order each party to bear its own costs as the matter is not yet concluded between them and the ground for retrial was caused by **District Land and Housing Tribunal**.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

22/5/2020

Court: Ruling delivered in the presence of the parties. B/C Catherine present.



J. R. Kahyoza

JUDGE

22/5/2020