

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

LAND APPEAL NO. 52 OF 2018

(Arising from District Land and Housing Tribunal for Singida at
Singida in Land Application No. 12 of 2014)

ZAKE WILBARD RWIZAAPPELLANT

VERSUS

TATU ALLY MUNARESPONDENT
2/3/2020 & 6/4/2020

JUDGMENT

MASAJU, J.

The Appellant, Zake Wilbard Rwiza, unsuccessfully sued the Respondent's late husband Khalifa A. Kisumo in the District Land and Housing Tribunal for Singida at Singida in the Land Application No. 12 of 2014. The late Khalifa A. Kisumo died before the matter was finalized in the trial Tribunal thus the Respondent Tatu Ally Muna was appointed as an Administratrix of the Estate of the late Khalifa A. Kisumo hence party to the Land dispute in lieu of her late husband.

The Appellant who was aggrieved by the trial Tribunal's decision filed the appeal in the Court vide the Petition of Appeal which carries seven (7) grounds of appeal.

At the hearing of the appeal on the 28th day of February, 2020 the Appellant was represented by Mr. Godfrey Wansonga, Advocate, while the Respondent was advocated by three learned counsels, Mr. Elias Machibya, Mr. Nkumuke Yongolo and Ms. Lilian Kimaro.

At the hearing of the appeal Mr. Godfrey Wasonga, the learned counsel for the Appellant argued two grounds, *inter alia*, thus;

Firstly, he submitted that the trial Tribunal's assessors were not given the opportunity to give their opinions contrary to Regulation 19 (2) of the Land Disputes Court (the District Land and Housing Tribunal) Regulations, 2003 and secondly, that the Respondent, Tatu Ally Muna, was unprocedurally made a party to the case in the trial Tribunal. The Appellant's learned counsel thus prayed the Court declare the proceedings of the trial Tribunal a nullity.

On their part the Respondent contested the entire appeal but when responding to the Appellant's they prayed the Court not to nullify the entire proceedings but only the decision in case the Court finds there was irregularity in regard to assessors' opinion.

The court will not determine the merit of the appeal since the raised points of law, other things being equal, may dispose of the entire appeal. The trial Tribunal's original records bear the handwritten opinion of the two assessors one in Swahili and another in English. The said opinions are not dated neither is there any record that the opinion were read over to the parties before the judgment. Their opinion is only referred in the trial Tribunal's judgment. The fact that the assessor's opinion were not dated

leaves the Court with questions as to how and when were the opinion given and presented in the trial Tribunal. Regulation 19 (2) of the Land Disputes Court (the District Land and Housing Tribunal) Regulations, 2003 provides;

"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 assessors may give his opinion in Kiswahili."

In the instant case, the trial Tribunal's proceedings does not reveal if really the assessors' opinion were given at the time conclusion of hearing, prior to judgment.

In the case of **Tubone Mwambeta V. Mbeya City Council, Civil Appeal No. 287 of 2017 (Unreported)** it was decided that;

"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 Regulation requires every assessor present at the trial at the conclusion of the hearing 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."

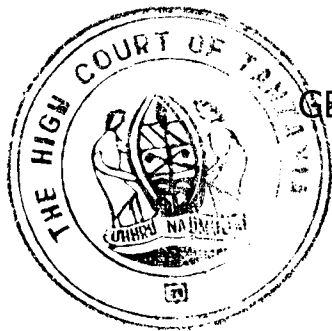
Thus, the Court finds an irregularity in the trial Tribunal's pronouncement of its decision.

The Court is of the considered position that the second ground raised by the Appellant on whether or not the Respondent has *locus standi*, the said 2nd ground has no legs to stand since he did not object when the Respondent presented herself in the trial Tribunal as an Administratrix of the Estate of the late Kahalifa A. Kisumo neither did he object the Exhibit D7 that is form No. 4 for Appointment of an Administratrix. The trial Tribunal records at page 14 on the 15th day of August, 2016 shows clear that it is the Appellant's Advocate Mr. Boniface Kamwesigile who notified the trial Tribunal on the appointment of the Respondent as an administratrix and referred to her as the Respondent.

That said, the Court invokes its revisionary powers by virtue of section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216] to nullify and quash the orders given by the trial Tribunal immediately upon the conclusion of the trial of the case setting the dates for delivery of Judgment. The said orders for judgments delivery are dated the 4th day of December, 2017; the 2nd day of February, 2018; the 9th day of March, 2018 and the 13th day of April, 2018 along with its record of proceedings thereof, the Judgment and the Decree thereof dated the 18th day of June, 2018. The said Orders and its record of proceedings, the Judgment and Decree thereof are hereby so nullified and quashed.

The trial Tribunal shall summon the parties together with the same Assessors who participated in the entire trial and were present at the

conclusion of the trial before the same trial Tribunal Chairman. The said trial Chairman shall ask the said Assessors to give their written, signed and dated opinion in the presence of the parties pursuant to Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunals) Regulations, 2003. The said written opinion by the Assessors shall be read over in the presence of the parties and then be made part of the original record of the trial Tribunal prior to the trial Chairman's giving the order as to when the Judgment will be delivered. The sooner the trial Tribunal reconvenes the better for timely delivery of justice. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

6/4/2020