

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

MISCELLANEOUS LAND APPEAL NO 41 OF 2019

(Arising from the decision of the District Land and Housing Tribunal in Appeal No 64/2019 and Originating from the Mirwa Ward Tribunal land Application No 10 of 2019)

ANNA BUSUROAPPELLANT

Versus

AMARI MWITA RESPONDENTS

RULING

19th & 24th February, 2020

Kahyoza, J.

Anna Busuro is the Amari Mwita's sister in law. Anna Busuro was married to Amari Mwita's late brother. The dispute between Anna Busuro and Amari Mwita is over a piece of land Amina Mwita and her late brother occupied peacefully. Anna Busuro sought to evict her sister in law from the disputed land by instituting a land dispute before the Ward Tribunal of Mirwa. Anna Busuro lost her claim and appealed to the District Land and Housing Tribunal of Musoma. The Chairman of the District Land and Housing Tribunal heard the appeal with aid of assessors as required by the law. At the conclusion of the hearing the Chairman fixed a date for the assessor to give their opinion. The record does not show if the opinion of the assessors was

read to the parties. The record further bears testimony that on the date fixed for reading the opinion, none of the assessors was present. The record contains written opinion of the assessors which the Chairman took into consideration when he composed the judgment.

The issue is whether the opinion of the assessor was read over to the parties as required by law.

At the hearing both the appellant and the respondent were requested to address the Court on the issue whether the Chairman or the assessors read the opinion to them. The appellant contended that the DLHT did not read the opinion of the assessor to them. The respondent submitted that what she heard was that she won the case.

It is a settled principle of law that at the conclusion of the hearing the Chairman of the DLHT should call upon the assessors to give their opinion in writing and **read the same to the parties**. This is in accordance with regulation 19(2) of the **Land Disputes Courts Act (District Land and Housing Tribunal) Regulations, 2002 G.N. 174/2003**. The regulation states that:-

"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."

The Court of Appeal of Tanzania held in its decision that the DLHT should read the assessors' opinion to the parties before composing its judgment. The Court of Appeal in **Tubone Mwambeta Versus Mbeya City Council**, Civil Appeal No. 287 of 2017 (unreported) stated

thus: -

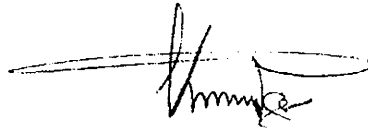
*"In view of the settled position of the law where the trial has to be conducted with the aid of the assessors/ ...they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed...since Regulation 19(2) of the Regulations require 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.**"*

Given the above settled position of the law, I am of the firm view that the District Land and Housing Tribunal failed to actively involve the assessors in the determination of the appeal. It failed to cause the written opinion of the assessors to be read in the presence of the parties. Thus the DLHT heard the appeal without aid of assessors in violation of 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 an incurable defect and it renders the proceedings a nullity.

In the upshot, I quash the proceedings and set aside the judgment of the DLHT. I direct the appeal to be heard *denovo* before another Chairman and with a new set of assessors.

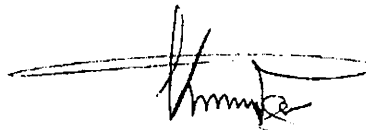
No order as to costs. Each party shall bear its own costs as none of them is to blame but the **District Land and Housing Tribunal**.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
24/2/2020

Court: Ruling delivered in the presence of the appellant and the respondent. B/C Charles present.



J. R. Kahyoza
JUDGE
24/2/2020