

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

MISCELLANEOUS LAND CASE APPEAL NO 36 OF 2019

*(Arising from the decision of the District Land and Housing Tribunal in Appeal No 150/2018
and Originating in the Mbogi Ward Tribunal land Application No 41 of 2017)*

MWITA SWAGIAPPELLANT

Versus

MWITA GETEBA RESPONDENT

RULING

7th & 24th February, 2020

Kahyoza, J.

John Mwita Swagi also referred to **Mwita Swagi** sued **Mwita Geteba** seeking for vacant possession before the Ward Tribunal. **Mwita Swagi** won the case. **Mwita Geteba** appealed to the District Land and Housing Tribunal (**DLHT**). The Chairman of the **DLHT** heard the appeal with aid of assessors as required by the law. At the conclusion of the hearing the Chairman fixed a date of judgment. The chairman did not fix a date for the assessors to read their written opinion in the presence of the parties. However, record contains written opinion of the assessors. The Chairman differed with the opinion of the assessors without providing reasons.

The issue for determination is whether it was proper for the assessor give their opinion in the absence of the parties.

The appellant instituted the appeal to this Court from the decision of the **DLHT** raising six grounds of appeal and the respondent filed his reply. The Court heard the appeal. In the course of preparing the judgment the Court found out that the **DLHT** did not take the opinion in the presence of the parties and it did not give reasons why it differed with assessors. The Court summoned the parties to address it on the issues. Both parties submitted that the assessors did not give their opinion in their presence.

The DLHT is composed of a 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)

The record of proceedings of the **DLHT** shows vividly the names of the assessors involved in the appeal as being **Ms. Grace Monge** and **Mr. Naftali Mwanga**. The record further shows that the assessors composed and filed their opinion on the 24th May, 2019. On that date, that is the 24th May, 2019 none of the parties was present before the **DLHT**. Assessors who take part in the trial or appeal before the DLHT are required give opinion in writing as provided by 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 Kishwahili.”

The Assessors gave their opinions I hope from practice not in compliance with the law. There is no indication that the assessors were called upon to give their opinion at the closure of the hearing of appeal as required by law. The proceedings show that after the closure of the hearing of the appeal on the 16th April, 2019, the Chairman of the District Land and Housing Tribunal fixed a judgment date. The Chairman did not call upon the assessors to give opinion or direct them to give opinion on the future date. Parties have a right to know the opinion of the assessors. The Chairman’s act was against the clear holding of the Court of Appeal in **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (unreported) that **it was 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 of Appeal 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.”

The Chairman in the case at hand, did not, at the conclusion of the hearing of the appeal indicate that he was availing time to the assessors to give their opinion or did he give an opportunity to the parties to know the nature of the assessors' opinion. In another case of **Edina Adam Kibona V Absolom Swebe CIVIL APPEAL NO. 286 OF 2017 CAT (Unreported)** the Court recapitulated its position that failure to call upon the assessors to give opinion and to let the parties know the contents of the assessors' opinion was a ruinous defect. The Court of Appeal stated: -

*“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, 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.***

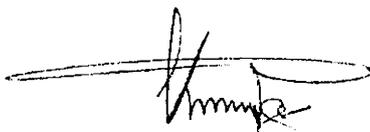
For the avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in view of the fact that the record does not show that the assessors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

On the strength of the above cited authorities and law, I am of the firm view

the District Land and Housing Tribunal failed to actively involve the assessors in the appeal, 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 fatal and vitiates the proceedings, rendering it hearing of appeal without assessors. Consequently, the proceedings are quashed and the judgment set aside. I direct the appeal to be heard afresh immediately, before another Chairman and with a new set of assessors.

Each party shall bear its 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.

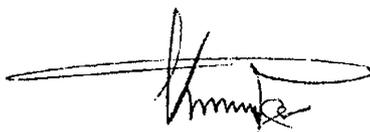


J. R. Kahyoza

JUDGE

24/2/2020

Court: Ruling delivered on the presence of the appellant and the Respondent. B/C Charles present.



J. R. Kahyoza

JUDGE

24/2/2020