

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND APPEAL NO. 3 OF 2020**

*(Emanating from Land Case No. 03/2019 of Msima Ward Tribunal and Appeal No. 50/2019 of Korogwe District Land and Housing Tribunal)*

**HASSANI A. NKUBA.....APPELLANT**

***-VERSUS-***

**HAJI MWARABU.....RESPONDENT**

**JUDGMENT**

*Date of last order: 08/10/2021*

*Date of judgment: 01/11/2021*

**AGATHO, J.:**

The Appellant being aggrieved by the decision of Korogwe District Land and Housing Tribunal at Korogwe delivered on 19/11/2020 appealed to this Court on the following grounds:

1. That, the Tribunal Chairperson erred in law and fact for failure to cause assessors' opinion to be read over to the parties before the final judgment.
2. That, the Tribunal Chairperson erred in law and fact for failure to observe that since there was lapse of twelve years as alleged by the

Respondent herein, the matter was incompetent before the ward tribunal and was unmaintainable because of time limitation.

3. That, the Tribunal Chairperson erred in law and fact for holding that the disputed land has Respondent's residence and grave site the fact which is totally false and completely untrue where non witnessed when the tribunal visited the disputed land.
4. That the Tribunal Chairperson erred in law and fact for failure to properly evaluate the evidence tendered and witnessed of locus in quo.
5. That the Tribunal Chairperson erred in law and facts to deliver the judgment in favour of the Respondent based on unfounded evidence that the disputed land is developed while it is a bare land therein.
6. That the Tribunal Chairperson erred in law and fact to depart from the opinion of the respected assessors without stating any reasons.
7. That the Tribunal Chairperson erred in law and fact to deliver the judgment by basing on inconsistent evidence adduced by the Respondent and his witnesses from the locus in quo.

On the date fixed for hearing the Court ordered the appeal to be disposed by way of written submissions. It drew the schedule for filing parties' submissions and they did abide to it.

Instead of going through all the grounds of appeal as submitted by the parties, the Court noticed one ground of appeal that may determine the entire appeal. That is the first ground of appeal. I am saying so because the ground is anchored on the point of law and failure to observe the same disposes the appeal. I asked myself, whether the assessors' written opinions were read over to the parties before the judgment was composed? The Appellant's counsels have lamented that the Tribunal Chairperson did not course the opinions of the assessors to be read over to the parties before composing the judgment. It is in the interest of justice to find out whether such allegation is true.

The record of District Land and Housing Tribunal proceedings show that the assessors did write their opinions. The first assessor: Mary Wasiwasi Mhina, her opinion is date 31/01/2020. The second assessor: Martin A. Nampesya, his opinion is dated 14/02/2020. As will be shown later these dates are also significant.

From above, it follows that the provisions of Regulation 19(2) of Land Disputes Court/the District Land and Housing Tribunal Regulation of 2003 was partly complied in that the assessors wrote their opinions. However, the proceedings of the District Land and Housing Tribunal are silent as to whether the assessors' opinion were read over to the parties before judgment was delivered.

The problem here is that nowhere in the proceedings of District Land and Housing Tribunal did the chairperson cause the written opinions of the assessors to be read over to the parties. It means the parties were denied the right to know the opinions of the assessors. This is a fatal irregularity as it was stated in **Edina Adam Kibona v Absolom Swebe (Sheli) Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania at Mbeya**. In this case the Court of Appeal of Tanzania held at page 6 that:-

*"In trials before the DLHT assessors must fully participate and at the conclusion of evidence, in terms of Regulation 19(2) of the Regulations, the Chairman of DLHT must require everyone of them to give his opinion in writing. That opinion must be in the record and must be read to the parties before judgment is composed."*



The first ground of appeal has merits and basing on that ground alone the appeal is determined. Since failure to read over opinion of assessors to the parties before composing judgment of District Land and Housing Tribunal as per Regulation 19(2) of Regulation of 2003 is fatal I find the appeal to have merits.

Just like in **Edina Adam Kibona's case** the original record of proceedings of the District Land and Housing Tribunal contains written opinions of assessors which the Chairperson of the District Land and Housing Tribunal referred to them in his judgment (at page 4). However, the record of proceedings of the District Land and Housing Tribunal does not show whether the assessors read them over in the presence of the parties before the judgment was composed. It is equally unclear as to when and at what stage the said opinions found their way into the District Land and Housing Tribunal record.

Besides that, in my perusal of the record I observed that the opinions of the assessors were given before visiting the locus in quo (suit land) while the visit is part of evidence. It is unclear whether this was an oversight or not. Be it as it may it is fatal. The first assessor's opinion is dated 31/01/2020, and that of the second assessor is dated 14/02/2020.

Moreover, and as per pages 3-5 of District Land and Housing Tribunal proceedings, the visit to locus in quo was done on 03/09/2020. And, judgment was scheduled to be delivered on 03/10/2020. This is seen on page 5 of the District Land and Housing Tribunal proceedings.

I am of the settled view that when there is a visit to locus in quo, evidence by Court/District Land and Housing Tribunal witness or additional evidence, and the said visit to locus in quo is done or such receiving of evidence of tribunal's witness is done after the parties have adduced their evidence the tribunal/court shall after visiting locus in quo or receiving the said court's witness evidence proceed to call upon the assessors to give their written opinions and subsequently read them out in the presence of the parties before composing the judgment.

In the end I find the first ground of appeal to have merit. And basing on that ground alone I allow the appeal. The proceedings and judgment of the District Land and Housing Tribunal are nullified. I order commencement of an expedited fresh hearing of the appeal at District Land and Housing Tribunal of Korogwe before another Chairperson and a new set of assessors.

I make no order for costs.

**DATED at TANGA** this 1<sup>st</sup> Day of November 2021.



  
**U. J. AGATHO**  
**JUDGE**

**01/11/2021**

**Date:** 01/11/2021

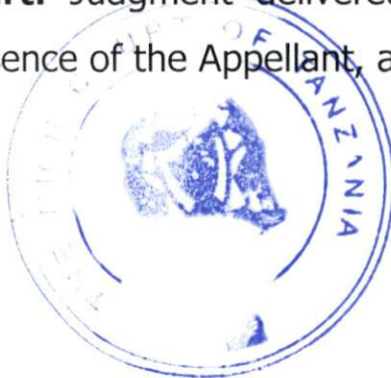
**Coram:** Hon. Agatho, J

**Appellant:** Present

**Respondent:** Present

**B/C:** Zayumba

**Court:** Judgment delivered on this 1<sup>st</sup> day of November, 2021 in the presence of the Appellant, and the Respondent.



  
**U. J. AGATHO**  
**JUDGE**

**01/11/2021**

**Court:** Right of Appeal fully explained.



  
**U. J. AGATHO**  
**JUDGE**

**01/11/2021**