

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND APPEAL NO. 10 OF 2020

(Originating from the District Land and Housing Tribunal for Rungwe at
Tukuyu in Land Application No. 31 of 2016)

SISTA KANANDI.....APPELLANT

VERSUS

PWELA EDSON.....RESPONDENT

JUDGEMENT

Date of Last Order : 02/12/2020
Date of Judgement: 10/02/2021

MONGELLA, J.

The appellant is seeking to impugn the decision of the District Land and Housing Tribunal for Rungwe (the Tribunal) rendered in Land Application No. 31 of 2016 on 19th July 2018. He filed a four grounded memorandum of appeal. However, I shall first deal with ground number 3 which presents a point of law capable of disposing the whole appeal if answered in the affirmative. The appeal was argued by written submissions timely filed by the parties in accordance with the scheduled orders by the court.

On this ground the appellant claims that the wise assessors were not fully involved in the determination of the matter before the Tribunal. In the



submissions filed by his advocate Mr. Ignas Ngumbi, the applicant shortly argued that the involvement of the assessors does not feature in the Tribunal proceedings. He argues that there is nothing indicating that the assessors' opinion was read over to the parties to enable them know the nature of their opinion and whether or not the said opinion was considered by the Hon. Tribunal Chairman. Referring to the case of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (CAT, unreported), he contended that the procedural omission is incurable and vitiates the proceedings and decision of the Tribunal.

In reply, the respondent who appeared in person argued that this defect is a minor technical error. He added that the main role of assessors is to assist the mediator to interpret the facts of conflict in the light of customs, beliefs and ways of life of the local inhabitants. He contended that despite the fact that assessors perform legal duties they are not lawyers. Therefore, in the matter at hand the main issue to be considered is whether the assessors' opinion featured in the Tribunal decision and was considered in that decision. He concluded that in the Tribunal decision it is apparent that the Hon. Chairman considered the assessors' opinion. He was of the stance that this ground is baseless.

I have considered the arguments by both parties and gone through the proceedings of the Tribunal. In the proceedings, it is indicated that on 19th June 2018 the defence side closed its case. After that the Hon. Chairman scheduled a date for judgment which was 19th July 2018. The proceedings as rightly argued by Mr. Ngumbi do not show the wise assessors being



invited to air their opinion in the presence of the parties or the said opinion being read before the parties.

The law is very categorical regarding involvement of assessors. It provides for mandatory procedural requirements of which if omitted the effect thereof is to vitiate the proceedings and ultimate decision of the Tribunal. See: **Regulation 19 (2) of the Land Disputes Courts (the District and Housing Tribunal) Regulation, 2003** and **Section 23(1) and (2) of the Land Disputes Courts Act, Cap 216, R.E. 2002**, which provides for this requirement.

In the case of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 the CAT citing with approval the case of **Tubone Mwambeta v. Mbeya City Council**, (supra) held:

"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors,...they must actively and effectively participate in the proceedings so as to make meaningfully 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 respondent argued that the Hon. Chairman considered the opinion of assessors in his decision something which signifies their participation. With all due respect, the law requires evidence of the assessors' participation in the proceedings of the Tribunal. The fact that the opinion features in the Tribunal decision does not conclusively show that they actively

participated in the determination of the case. Their participation has to be reflected in the proceedings to erase doubts as to whether they really fully participated as required under the law. On a similar situation the Court in **Tubone Mwambeta** (supra) held further that:

"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 the view of the fact that the records do not show that the assessors were required to give them, we fail to understand how and at what stage they found their way into 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 has no useful purpose."

From the above authorities, it is mandatory that the participation of assessors be reflected in the proceedings of the Tribunal. Failure to adhere to this procedural requirement is incurably fatal. Given this observation I nullify the proceedings and judgment of the Tribunal and order the matter to be tried *denovo* before another chairman and a new set of assessors.

Dated at Mbeya on this 10th day of February 2021.


L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 10th day of February 2021 in the presence of both parties and Mr. Ignas Ngumbi, learned counsel for the appellant.




L. M. MONGELLA

JUDGE