



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 72 OF 2019

(Arising from application No. 208 of 2007 of the District Land and Housing Tribunal of Bukoba)

**MUNICIPAL DIRECTOR
BUKOKA MUNICIPAL COUNCILAPPELLANT
VERSUS
HANIFA JUMA.....RESPONDENT**

JUDGMENT

Date of last order 05/03/2021

Date of judgment 09/03/2021

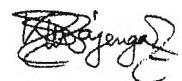
Kilekamajenga, J.

The appellant in this case appeared before this Court challenging the decision of the District Land and Housing Tribunal which was delivered on 04th February, 2016. The appellant was armed with seven grounds of appeal coached thus:

- 1. That, the trial tribunal grossly misdirected itself in law and fact by holding that "AW1" (applicant/respondent) proved her ownership while in the records he admitted that the seller one Fraisca Gosbert did not tell him where he got the disputed land, hence caveat emptor applies.*
- 2. That, the trial chairman erred in law and fact for improperly recording the testimony of "RW1" one Murshid Issa.*

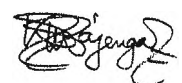
- 3. That, the learned tribunal chairman misdirected himself in law and fact to hold that "AW1" (applicant/respondent) proved her ownership while exhibit R1 9the sale agreement) is not authentic and the seller one Fraisca Gozbert was not called to give his testimony as required by law.*
- 4. That, the trial chairman erred in law and fact to order the appellant to pay Tshs. 5,800,000/= as compensation for alleged demolition of foundation without any legal base.*
- 5. That, the trial chairman erred in law and fat to deliver the impugned judgment without recording the opinion of assessors in the proceedings contrary to the law*
- 6. That, learned chairman misdirected himself in law and fact for delivering judgment which contravene the law.*
- 7. That, the trial chairman erred in law fact to entertain the suit without identifying the disputed land properly.*

Despite several attempts to serve the summons to the respondent but the efforts ended in vain. The appellant incurred the costs of publishing the summons in the newspaper on 30th July 2020. Thereafter, the Court ordered the matter to proceed in absence of the respondent. The appellant finally appeared before this Court to argue the appeal. The appellant was represented by the learned solicitor, Mr. Athumani Msosole. In the oral submission, the counsel argued that it was pertinent to address on the 5th ground of appeal because it is enough to dispose of the appeal. He argued



that before the decision of the District Land and Housing Tribunal is made, assessors' opinions must be considered. Such opinions must be recorded in the judgment. In this case, there were no such opinions which feature in the judgment. For that reasons therefore, the decision of the District land and Housing Tribunal is invalid and has no legal value. He finally prayed for the judgment and decree of the trial tribunal to be quashed for irregularity.

In disposing of this appeal, I wish to invoke the revisionary powers of this court to address the errors noted in the proceedings of the trial tribunal. When the tribunal raised issues for determination, members were G. J. Kadasso (chairman) and two assessors namely, Cecilia and Makwaya. The tribunal raised five issues. When the hearing commenced, the names of assessor as not indicated and the tribunal chairman was R.E Assey. The second applicant was heard on 19/06/2012 and the assessors were Makwaya and Kawegere. When the defence hearing commenced on 16/06/2015, the names of assessors are not indicated. Furthermore, there is no order to invite the assessors to give their opinions before the judgment could be delivered. The record shows that one of the assessors who gave his opinion was Bwahama while he does not appear in the records during the hearing of the case. The other assessor also gave his



opinion but his name is not even known. In the tribunal's judgment, the chairman did not consider the assessors' opinion apart from noting that *"my two assessors opined in favour of the applicant. I concur with them so the application is allowed with costs."* This process was contrary to section 23 of the Land Disputes Courts Act, Cap. 216 RE 2019 which provides that:

'23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a 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 judgment.

(3) ...'

Furthermore, the proceedings of the trial tribunal show that five issues were framed for determination. But in the judgment, the chairman only listed three issues. Anyway, this may not be fatal because omission to frame issues may not invalidate the decision of the court/tribunal trial. In the case of **Tuungane Workshop v. Audax Kamala [1978 LRT No. 21]**, the Court stated that:

'Omission to frame issues is not fatal unless it results in failure to decide properly the point in question amounting to a failure of justice. Such an omission should amount to a mistrial, entitling the appellate court to remit the suit for a retrial.'

What is the most disturbing feature in this case is the decision of the trial tribunal. It should be noted that, in this case, the applicant summoned three witnesses and the defence had one witness. The evidence adduced by witnesses and all the three issues are only contained in a two and a half pages judgment. The first page of the judgment was an introduction, the second page contains a list of issues and some few other words and the last page contains a statement allowing the application. There was no analysis of evidence nor discussion on the issues. In essence the judgment is just contained on a single paragraph which also lacks reasoning. This is contrary to order Regulation 20(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. The Regulation provides that:

'20(1) The judgment of the Tribunal shall always be short, written in simple language and shall consist of:

- (a) a brief statement of facts;*
- (b) findings on the issues;*
- (c) a decision; and*

(d) reasons for the decision.'

Based on the above provisions of the law, with respect, the tribunal chairman did not write a judgment because a single paragraph may not be sufficient to comply with the above law. I find the appellants grounds of appeal have merit. I hereby allow the appeal with costs and set aside the decision of the District Land and Housing Tribunal. Order accordingly.

DATED at BUKOBA this 09th Day of March, 2021.


Ntemi N. Kilekamajenga.
JUDGE
09/03/2021



Court:

Judgement delivered in the presence of the counsel for the appellant, Mr. Richard Laurian. The respondent was absent.


Ntemi N. Kilekamajenga.
JUDGE
09/03/2021

