

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

**AT MWANZA
LAND APPEAL NO. 67 OF 2019**

(Arising from Land Application No. 11 of 2015 at the District Land and
Housing Tribunal at Geita)

JUMANNE ALLY MASUNGA APPELLANT

VERSUS

CRDB BANK PLC GEITA BRANCH RESPONDENT

JUDGMENT

Date of last Order: 01.03.2021

Date of Judgment: 01.03.2021

A.Z.MGEYEKWA, J

This is the first appeal. It stems from the decision of the District Land and Housing Tribunal for Mwanza in Land Application No. 11 of 2015. Brief facts relevant to the case at hand are that Jumanne Ally Masunga, the appellant filed an application against the CRDB Bank PLC Geita Branch prays for this court to preclude the respondent from selling the disputed piece of land and to extend the time to the appellant to pay the debt. The

District Land and Housing Tribunal dismissed the said application. The appellant was not pleased with the decision of the Tribunal. He, therefore, preferred an appeal to this court.

The appellant lodged this appeal and raised three grounds of appeal. The grounds of appeal are as follows:-

1. *That trial tribunal erred in law since assessors cross examined the witnesses.*
2. *That the trial court erred in law as the assessors did not give their opinion in writing and in presence of the parties.*
3. *That the whole decision was against the law and evidence on record.*

When the appeal was called for hearing before this court on 12th October, 2020. Mr. Emmanuel John, learned counsel, represented the appellant while Mr. Mboneko, learned counsel, appeared for the respondent.

It was Mr. Mboneko, learned counsel for the respondent who started to kick the ball rolling. Mr. Mboneko was brief and straight to the point. He conceded with the appellant's grounds of appeal. He went on to submit after a thorough perusal in the District Land and Housing Tribunal of Geita he realized that the assessors' opinion were not featured in the tribunal record. He stated that the Chairman went into error for failure to adhere

to the law. Therefore he ended up conceding the appeal and urged this court to allow the appeal without costs for the main reason that it was the tribunal's fault for failure to adhere to the required procedure of the law.

Mr. Emmanuel John, learned counsel for the appellant had not much to say. He was pleased that the learned counsel for the respondent noted the irregularities. He further stated that on the third ground of appeal, the Coram of assessors changed. He added that on 12th August, 2015 the Coram shows that assessors Mabula and Shamte sat with the Chairman and on 17th May, 2016 Chairman was with a different set of assessors; Mabula and Nakinuno contrary to section 23 (3) of the Land Disputes Courts Act Cap. 216 [R.E 2019].

On the strength of the above submission, Mr. Emmanuel John beckoned upon this court to quash the decision of the District Land and Housing Tribunal and remit the file to the tribunal and the matter be placed to another Chairman. He urged this court to allow the appeal with costs.

Having heard the submissions of both learned counsels for and against the appeal and after carefully going through the court records of the District Land and Housing Tribunal, I have to say that I will determine the issue *whether the appeal is meritorious*.

I have perused the records of the trial Tribunal and noted that the tribunal contravened the procedure as far as the issue of participation of assessors in the trial of the case concerned. Reading the tribunal's record, it is shown that the assessors took part in the hearing of the case. As rightly pointed out by both parties, the record does not show if the Chairman invited the assessors to give their opinion as per the requirement of the law. Section 23 (2) of the Land Disputed Courts Act, Cap. 216 [R.E 2019] state that:-

*"Section 23 (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.**" [Emphasis added].*

Likewise, Regulation 19 of the District Land and Housing Tribunal Regulations of 2003 provides that:-

*"19 (2) Notwithstanding sub-regulation (1) the chairman shall, before making his judgment, **require every assessor present at the conclusion of hearing to give his opinion in writing** and the assessor may give his opinion in Kishwahili." [Emphasis added].*

In the instant appeal, the Chairman in his judgment referred to assessors' opinion but the same were not recorded in the tribunal

proceedings. Therefore, it seems that the assessor's opinion were not given in presence of the parties. In numerous cases, the Court of Appeal of Tanzania has been holding the position that assessors' opinion must be given in the presence of parties. In the case of **Edina Adam Kinona v Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 at Mbeya the Court of Appeal of Tanzania held that:-

*"...we are aware that the original record has the opinion of assessors in writing...However, the record does not show how the opinion found its way in the court records....The Chairman **must require every assessor present to give his opinion.** It may be Kiswahili. **That opinion must in the record and must be read to the parties before the judgment is composed.**"*
[Emphasis added].

Similarly, in the case of **Ameir Mbarak and Azania Bank Corporation Ltd v Edgar Kahwili**, Civil Appeal No. 154 of 2015, the Court of Appeal of Tanzania held that:-

*"In our considered view, **it is unsafe to assume the opinion of the assessor which is not on the record by merely reading the acknowledgment of the chairman in the judgment.** In the circumstances, we are of a considered view that, assessors did not give any opinion for the Tribunal's*

judgment and this was a serious irregularity.” [Emphasis added].

Based on the above authorities, it is clear that the records must contain written opinion of assessors. In the instant case, the opinion of assessors were not recorded as per the requirement of the law. The Chairman merely acknowledged the assessors' opinion which never existed. Failure to record the assessors' opinion on the original proceedings and judgment is fatal. This flagrant omission of failure to comply with the requirement of the law, rendered the trial Tribunal's proceedings a nullity.

For the foregoing reasons, I find merit in the first, second, and third grounds of appeal. Having so done, I think, as already alluded to above, this appeal can be disposed of on this ground only. On the premises, I refrain from making a decision on the remaining grounds, doing so will be an academic endeavour.

For that reason, I invoke the revisional powers bestowed upon this court by the provisions of section 43 (1) the Land Dispute Courts Act, Cap. 216 [R.E 2019], I hereby nullify the proceedings and judgment of the District Land and Housing Tribunal in Misc. Application No. 42 of 2019. I order that if the parties are still interested an expedient fresh hearing

before another Chairman and a new set of assessors be commenced. No order to costs the since it was not the fault of the parties.

Order accordingly.

DATED at Mwanza this 01st March, 2021.




A.Z MGEYEKWA
JUDGE
01.03.2021

Judgment delivered on 01st March, 2021 via audio teleconference whereas Mr. Kinango, learned counsel, and Mr. Bomani, learned counsel for the appellant and respondent respectively were remotely present.


A.Z MGEYEKWA
JUDGE
01.03.2021