

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

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

MISC. LAND APPEAL NO. 12 OF 2020

(Originating from the District Land and Housing Tribunal for Kyela at Kyela in Misc. Application No. 18 of 2019. Originating from Itope Ward Tribunal in Land Case No. 10 of 2018.)

PROFESSOR MALISE KAISI.....APPELLANT

VERSUS

EVANCE DONARD MWAKYUSA.....RESPONDENT

JUDGEMENT

Date of Last Order : 28/01/2021
Date of Judgement: 10/03/2021

MONGELLA, J.

In this appeal the appellant is challenging the decision of the District Land and Housing Tribunal for Kyela (the Tribunal) rendered in Miscellaneous Application No. 18 of 2019. He filed a petition of appeal containing 6 grounds. The court however noted a legal issue in the proceedings of the Tribunal regarding the active involvement of assessors and ordered the parties to address the issue while arguing the grounds of appeal. I shall thus deliberate first on this issue and if need be proceed to determine the filed grounds of appeal.



Addressing the court on this point, Mr. Anthony Mbogo, learned advocate representing the appellant, started by referring to the position of the law on the issue. He submitted that the law as provided under section 22 and 23 of the Land Disputes Courts Act requires the Tribunal to be composed by a chairman and not less than two assessors. He said that the law also under section 24 provides that in any of its decisions the tribunal chairman must take into consideration the opinion of assessors. Referring to the proceedings of the Tribunal in the matter at hand, he argued that the record is clear that there was no opinion of assessors.

Under the circumstances, Mr. Mbogo argued that the consequences for such omission had always been to nullify the judgment and proceedings of the Tribunal and the matter to be heard afresh. To bolster his argument he referred the court to various cases from this court and the court of appeal being: **Niga Mwakajumba v. Justine Abas Sanga**, Land Appeal No. 15 of 2018 (HC at Mbeya, unreported); **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (CAT at Mbeya, unreported); and **General Manager Kiwengwa Stand Hotel v. Abdallah Said Musa**, Civil Appeal No. 13 of 2012. He concluded that the law has not categorized the matters to which assessors must be fully involved thus they have to be involved in all matters dealt with by the Tribunal. Failure to adhere to this procedural requirement renders the Tribunal decision a nullity.

On the other hand, the respondent fended for himself. Replying to the issue of involvement of assessors, he first said that the court never raised the issue, but it has been brought up by the appellant through a back door. I find this reply rather absurd as the court made this order twice. First

it was on 09th July 2020 when the matter came for necessary orders and second it was 26th November 2020 when the court scheduled orders for filing written submissions whereby the court reminded the parties of its previous order made on 09th July 2020. On both dates both parties were present in court.

Apart from making the above submission the respondent went ahead to reply that when the Tribunal is hearing applications like the one filed by the appellant, which was for extension of time, assessors are not to be involved. He argued so saying that in such applications the Tribunal is not sitting as a trial Tribunal or appellate Tribunal. He argued further that assessors are there to hear and assist the Tribunal by giving opinion on points of facts only and not issues of law. By this argument he concluded that the point raised lacks merit and should be disregarded.

I have considered the arguments by both sides. In fact there is no dispute that the assessors do not appear in the proceedings to have been fully involved in adjudicating the application by giving their opinion. The argument put up by the respondent is to the effect that the matter before the Tribunal was one of extension of time. As such, the respondent is of the argument that the assessors' involvement is not mandatory as the Tribunal in such applications is dealing with issues of law and not fact.

In my settled view, I do not subscribe to the respondent's argument. First of all, in applications for extension of time, the court is supposed to consider sufficient reasons advanced by the applicant. In the reasons advanced the applicant states why he delayed in filing the matter in

court on time. In the circumstances, the applicant shall be presenting matters of fact and not law as misconceived by the respondent. As such the assessors' involvement remains crucial.

Second, the law, as argued by Mr. Mbogo does not categorize the matters dealt with in the Tribunal needing involvement of assessors or not. The law as it stands, that is, section 23 (1) of Cap 216, provides that the Tribunal is duly constituted when seated by a chairman and not less than two assessors. This means that if the assessors are absent then the Tribunal is not duly constituted and whatever decisions it makes are considered a nullity. Likewise, in my settled opinion, it does not make sense for assessors to be present during the hearing for extension of time and in the end not air their opinion as to whether the applicant has advanced sufficient reasons to be granted the extension or not. If they attend the hearing and in the end not availed the opportunity to give their opinion, then their presence becomes meaningless and I do not think that was the intention of the legislation.

Under section 24 of Cap 216, the law requires the Tribunal chairman to consider opinion of assessors in reaching decisions. Section 2 of Cap 216 defines the term decision to include judgment, finding or ruling. Thus even in delivering of a ruling assessors are supposed to be involved and their opinion considered because rulings fall under the term "decision" as defined in section 2. See also: **Telesini Pangumwenda & 2 Others v. Jemsi Kileka**, Land Appeal No. 12 of 2019 (HC at Mbeya, unreported) in which this court dealt with a similar issue.



Following the above observation, it is my conclusion that since in the matter at hand assessors were not fully involved, the Tribunal was not properly composed and thus the proceedings and ruling thereof becomes a nullity. In the circumstances, the proceedings and judgment of the Tribunal are hereby nullified. I order the matter to be tried *denovo* before another chairman and a new set of assessors. No orders as to costs of the suit.

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


L. M. MONGELLA

JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 10th day of March 2021 in the presence of the respondent.




L. M. MONGELLA

JUDGE