

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

**MISCELLANEOUS LAND APPEAL NO. 25 OF 2020**

*(Originating from the District Land and Housing Tribunal of Bukoba in Application No. 14 of 2018 and Civil Case No. 13 of 2017 of Kyaitoke Ward Tribunal)*

**MAMELTA JEMSI.....APPELLANT**

***VERSUS***

**ALOYS JOHN.....RESPONDENT**

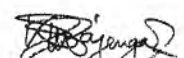
**JUDGMENT**

*27<sup>th</sup> July & 6<sup>th</sup> August 2021*

***Kilekamajenga, J.***

In this case, it is alleged that the respondent bought the disputed land from the appellant's husband in 1993 at the price of Tshs. 70,000/= . When the dispute arose, the appellant took the matter to the Ward Tribunal of Kyaitoke in 2017. After the hearing, the Ward Tribunal decided in favour of the appellant. Being aggrieved with the decision of the trial tribunal, the respondent appealed to the District Land and Housing Tribunal at Bukoba. The first appellate tribunal (DLHT) reversed the decision of the Ward Tribunal on the sole reason that the respondent's evidence was so overwhelming compared to that of the appellant. Thereafter, the appellant approached this Court seeking for justice. The appellant coined five grounds of appeal to convince this Court that the first appellate decision was erroneous. The grounds of appeal are herebelow:

- 1. That, the District Land and Housing Tribunal for Kagera erred in law in determining an appeal in favour of the respondent basing on an*



*incompetent petition of appeal filed by the respondent, instead of striking out the same in accordance with the law.*

- 2. That, the Honourable District Land and Housing Tribunal misdirected itself in basing its decision on the evidence of one of the witnesses, one Venance Masaazi, whose testimony was hearsay evidence which do not support the decision.*
- 3. That the District Land and Housing Tribunal for Kagera erred in law in holding for the respondent who had failed to prove that the appellant was involved in the alleged sale agreement over the disputed land between the respondent and the late James Kasato, contrary to the law.*
- 4. That the Honourable Chairman of the District Land and Housing Tribunal for Kagera erred in law in reversing the decision of the trial tribunal on points of facts, while the trial tribunal had visited the disputed land and was better placed to decide the case on the facts observed during the visiting.*
- 5. That the District Land and Housing Tribunal erred in law and fact and law in deciding for the respondent basing on the purported sale agreement which has contradictions on the sale price and the actual amount alleged to have been paid, it lacked the consent of the spouse and the sons of the purported vendor who are alleged to have been involving during the sale did not witness the same or sign the said sale agreement.*

When the parties appeared before me, the appellant was present and enjoyed the legal services of the learned advocate, Mr. Joseph Bitakwate whereas the respondent was present in person and without legal representation. The respondent prayed for the case to be disposed of by way of written submission. The prayer was granted and the Court issued the order of filing the submissions. In the written submission, the counsel for the appellant argued that, the

respondent's appeal before the District Land and Housing Tribunal was incompetent for lack of specific prayers contrary to section 35 of the Land Disputes Courts Act, Cap. 216 RE 2002. As there was no specific prayer in the respondent's appeal, it was therefore an error for the DLHT to declare the respondent as the lawful owner of the disputed land because such an order was not prayed by the respondent. The respondent's appeal before the DLHT deserved to be struck out. On this point, the counsel invited the Court to consider the case of **Anastazia Kapongo v. Zabina Said Kanyowa, Land Appeal No. 60 of 2009**, HC at Mwanza.

Mr. Bitakwate further alerted the Court on the illegality on the decision of the DLHT. He argued that the assessors did not give opinions before DLHT delivered its decision something which was contrary to **section 23(2) read together with section 34(1) of the Land Disputes Courts Act, Cap. 216 RE 2002**. In his view, this irregularity renders the proceedings and the decision of the DLHT a nullity. He cemented his argument with the case of **Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017**, CAT at Mbeya (unreported). On the second ground of appeal, the counsel for the appellant argued that the DLHT reversed the decision of the Ward Tribunal while the respondent's evidence was supported with hearsay evidence. He further argued that as long as the disputed land was a matrimonial property, the appellant was supposed to be involved in the sale as per the requirement of **section 159(6) of the Land Act, Cap. 113 RE 2019**. The counsel prayed for

the appeal be allowed and the decision of the DLHT be set aside and the decision of the Ward Tribunal be restored.

In response, despite the fact that the counsel for the respondent challenged the counsel for the appellant for citing **section 35(1) of the Land Disputes Courts Act, RE 2002 instead of RE 2019**, he conceded to the illegality that the assessors were not involved in giving their opinion and the opinion, if any, were not read in the presence of the parties. This illegality contravened **sections 23(2) and 34 of the Land Disputes Courts Act**. The counsel was also in support of the principle of law stated in the case of **Edina Adam Kibona** (*supra*) which requires assessors' opinion to be read in court in the presence of the parties before the chairman composes the judgment. Based on this blatant anomaly, the counsel for the respondent urged the court to quash the proceedings of trial tribunal and order the matter be heard *de novo*.

I have considered the competing arguments from the counsels and it is apposite to determine the merits in the grounds of appeal. I take the discretion to start my discussion with the point of assessors which was raised by the appellant and conceded by the counsel for the respondent. The counsel argued that the appeal was determined and the judgment delivered without considering the opinion of assessors. There is no doubt that on 23<sup>rd</sup> October 2018, the chairman ordered the assessors to record their opinion; on the same date the appeal was scheduled for judgment. The proceedings does not show whether such opinions were read to the parties before the chairman composed the judgment. Of

course, assessors' opinions appear in the court file but do not feature in the proceedings of DLHT. In practice, it is not sufficient for the assessors' opinion to appear in the file but not feature in the proceedings of the tribunal. As per the requirement of the law, before the case is scheduled for judgment, assessors must give their opinion in writing. Furthermore, such opinion must be read in the presence of the parties as it was stated in the case of **Edina Adam Kibona** (*supra*) thus:

*'That opinion must be in the record and must be read to the parties before the judgment is composed.'*

In addition, when assessors read the opinion in the presence of the parties, the chairman should record everything in the proceedings of the tribunal. All these procedures should be done before the chairman composes the judgment. This position of law has been stated in a number of cases including the case of **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble, Civil Appeal No. 197 of 2018**, CAT at Dodoma (unreported) where the Court of Appeal emphasized that:


*'It is also on record that, though, the opinion of the assessors were not solicited and reflected in the tribunal's proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the tribunal does not show that the assessors were accorded the opportunity to give the said opinion, it is not clear as to how and at what stage the said opinion found their way in the tribunal's judgment. It is also our further view that, the said opinion was*

*not availed and read in the presence of the parties before the said judgement was composed.'*

As the District Land and Housing Tribunal violated this principle of the law, the parties were denied the right to a fair hearing hence the illegality vitiates the decision and proceedings of the appellate tribunal. This ground alone is sufficient to quash the proceedings and set aside the decision of the District Land and Housing Tribunal. I hereby quash the proceedings and set aside the decision of the District Land and Housing Tribunal. I however, restore the decision of the Ward Tribunal which declared the appellant to be the owner of the disputed land.

**DATED at BUKOBA** this 06<sup>th</sup> day of August, 2021.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**06/08/2021**

**Court:**

Judgement delivered this 06<sup>th</sup> August 2021 in the presence of the counsel for the appellant, Mr. Joseph Bitakwate but the appellant was absent. The respondent was present in person. Right of appeal explained to the parties.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**06/08/2021**

