

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

LAND APPEAL NO. 10 OF 2020

(From the Decision of the District and Housing Tribunal of Tabora District at Tabora in land Case Application No. 14 of 2015)

SAID RAMADHANI FUNDIKIRA.....APPELLANT

VERSUS

**1. SAID THABIT MNWAGI
2. ANIL KUMAL MORJALIA
3. MABULA MABULA
4. EMMANUEL ILLESHA**

.....RESPONDENTS

JUDGMENT

Date 22/6/2021-27/8/2021

BAHATI, J.:

The appellant **Said Ramadhani Fundikira** aggrieved by the decision of the trial tribunal in Land Application No. 14/2015 before Hon. M. Nyaruka, Chairman, appeals to this Honourable Court against the whole decision on the following grounds;

- i. That the learned chairman of the tribunal erred in law to determine the appellant's Land Application on the bases that the Appellant had no locus stand to sue over the suit land the issue which was so raised suo motto and determined by the trial tribunal without affording the appellant the right to be heard.*

- ii. *That, since the assessors' opinion, was not read to the parties in the tribunal before the judgment could be composed then the proceedings of the trial and judgment thereof are nullity.*
- iii. *That in presence of cogent evidence adduced by the appellant which evidence carries more weight as compared to that of the respondent, the learned trial chairman, in disregard of the said cogent evidence, erred in law and fact to decide against the appellant.*

A brief background of this appeal is that the appellant is claiming on a piece of land located in Tabora Municipality. The appellant is moving this court to declare him to be the lawful owner of the disputed premise/land and also to restrain the respondents' acts amounts to trespass to the applicant's land.

When the appeal was called on for hearing, the appellant was represented by the learned counsel. Musa Kasimu and the first and second respondents were unrepresented; even though the third and fourth respondents were served; they never appeared for hearing of the appeal. As such, the appeal was heard *ex parte*.

The counsel for the appellant urged this court to submit only on the second ground of appeal. He submitted that since the assessor's opinion was not read to the parties in the tribunal before the judgment

could be composed then the proceedings of the trial tribunal and thereof the judgment was a nullity.

Mr. Kassim submitted that looking on the court proceedings, on 14/6/2017 when the defence case was closed there is nowhere stated that the Assessors opinion to be read, and the Judgment was read on 25/7/2017.

Section 23 (2) of the Land Disputes Court's Act, Cap 216 provides the need to read, and also Rule 19 (2) of the Land Disputes Court Regulation of 2003 of 174 directs the chairman to provide the date for assessors opinion before writing judgment. He submitted that this was not done by the Chairman instead the chairman gave judgment on 25/7/2017. To substantiate his position he cited the case of **Edna Adam Kibona Vs Absolom Swebe, Civil Appeal No. 286 of 2017** and also he submitted that this stand was articulated in the case of **Dorothy. Mathew Kakamba, Land Appeal No. 36 of 2018** where Bahati, J nullified the proceedings and judgment which had the same circumstances. Similarly the case of **Zubeda Hussein Kayagali Vs Oliva Gaston Luvakule, Civil Appeal No.312 of 2017**. This led to nullify all proceedings and judgment.

He contended that since there were irregularities this appeal be allowed and thence judgment be quashed with costs.

In his reply, the 1st respondent submitted that the chairman read the opinion of the assessors during the judgment. He submitted that they were with Yusuph Mwangazambili, the learned counsel, and won the case.

The second respondent also submitted that the chairman gave the judgment by including all assessors' opinions. The opinion was read before them, among them Fundikira and his counsel were there. The assessors were also present.

He also submitted that the opinion is noted on the judgment. They are only seen in the judgment but not in the proceedings before judgment. He prayed to this court to dismiss the appeal with costs.

In a brief rejoinder, the appellant reiterated his submission in chief that, indeed, the assessors did not write the opinion. The DLHT is supposed to be guided by law. It needs for a chairman to set date for opinion but the proceedings do not state so.

I have dispassionately considered the arguments of the parties herein and the proceedings of the court. The issue for determination is whether the assessors did give their respective opinion before the District Land and Housing Tribunal.

It is an established principle of law laid down by the Court of Appeal in numerous cases that, assessors' opinion must be expressly indicated in the record.

In this appeal at hand, the appellant complained that the assessors did not opine before the District Land and Housing Tribunal. Indeed, the typed proceedings of the District Land and Housing Tribunal justify the appellant's complaint. Neither does the record indicate that the assessors were not invited or instructed to bring their written opinions before the Tribunal, nor is it indicated whether their respective opinions were read to the parties before delivery of the Tribunal decision.

Section 23 (1) and (2) of the Land Disputes Courts Act, Cap 216 is couched in mandatory terms as hereunder that:

“(1) The District Land and Housing Tribunal established under section 22 shall be composed of one 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 opinions before the Chairman reaches the judgment.”

Again, Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 imposes a duty upon the Chairman to require assessors to give opinions in writing before a judgment is made.

The provision provides that,

"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 Kiswahili,"

Before the District Land and Housing Tribunal hearing of the appeal was concluded on 14/6/2017. After the conclusion of the said hearing, the learned Chairperson recorded the following:

"Order: Defence case is hereby closed.

Judgment on 25/7/2017

M.Nyaruka Chairman

14/6/2017

Date 25/7/2017

Court: Opinion of the Assessors had not been composed

Order: Judgement on 22/8/2017

Date 12/9/2017

M.Nyaruka Chairman

Assessors "1. Mama Mgumia

2. Mzee Juma

Court: The opinion of assessors is not in place

C/C: Make sure that the opinion is in place.

Judgment on 16/10/2017

The court noted that the opinion of assessors found its way on 1/2/2018 and another on 19/2/2018 where the judgment was read on 9/3/2018."

From the quotations above, the Chairperson did not require the assessors who were present after the hearing to give their opinion in writing. Neither does the record indicate that any such opinion which the Chairperson appeared to agree with in the judgement were read in the presence of the parties before delivery of judgment. The court has failed to understand at what stage the assessors' opinion found their way into the Tribunal judgment.

In the case of **Tubone Mwambeta v Mbeya City Council**, Land Appeal No.25 of 2015 (Unreported) where the Court of Appeal observed the role and importance of assessors' to give their opinion was insisted thus;

"The role of assessors will be meaningful if they actively and effectively participate in the proceeding before giving their opinion after the trial and before judgment is delivered. Also, the duty to ensure assessors opinions are considered in judgment is imposed on District Land Housing Tribunal under rule 19(2) of the Land Dispute Courts (The District Land And Housing Tribunal Reg.2003)."

Equally, the Court of Appeal in **Edina Adam Kibona V Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 it was held that;

Dispute Courts (The District Land And Housing Tribunal Reg.2003)."

Equally, the Court of Appeal in **Edina Adam Kibona V Absolom Swebe (Sheli)**, *Civil Appeal No. 286 of 2017* it was held that;

"...The opinion of assessors must be given in writing and be reflected in the proceedings before a final verdict is issued".

Guided by the above authorities in this appeal, it is clear that failure of the learned Chairperson to conform to the mandatory provisions of the law as revealed by the chairman in the judgment were not read in the presence of the parties before the judgment was composed. This makes the judgment of the District Tribunal inappropriate.

I thus invoke the power under section. 43 (1) (b) of the Land Disputes Courts Act, Cap.216 and proceed to quash the proceedings of the tribunal and set aside the judgment and decree thereof. I further order an expedited fresh hearing of the matter before another chairman with a different pair of assessors.

In view of the circumstances of the case, each party bears its costs.

Order accordingly.



A. A. BAHATI

JUDGE

27/8/2021



Judgment delivered under my hand and seal of the court in Chamber, this 27th day August, 2021 in the presence of both parties.



A. A. BAHATI

JUDGE

27/8/2021

Right of appeal fully explained.



A. A. BAHATI

JUDGE

27/8/2021

