

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**LAND APPEAL NO. 43 OF 2019**

*(Originating from Application No 7 of 2018 of the District Land and Housing Tribunal for Iramba at Kiomboi in Land Case No. 10 of 2018)*

**SELINA KEA .....APPELLANT**

**VERSUS**

**MARUGWE GWARAI .....RESPONDENT**

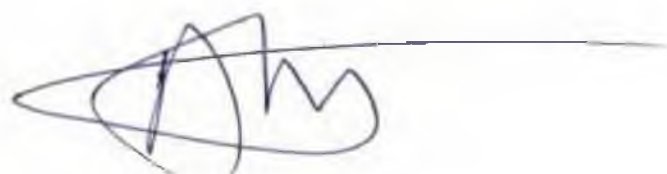
**JUDGMENT**

*Date of Last Order: 11/08/2021*

*Date of Judgment: 16/08/2021*

**Dr. A. J. Mambi, J**

In the District Land and Housing Tribunal of Iramba at Kiomboi the respondent (**MARUGWE GWARAI**) successfully appealed against the decision of the Mwangeza Ward Tribunal. While exercising its appellate jurisdiction, the District Land and Housing Tribunal made the decision in favour of the respondent. The appellate Tribunal



reversed the decision of the Trial Ward Tribunal and declared the respondent the lawful owner of the disputed land.

Aggrieved, the appellant lodged this appeal basing on one ground of appeal. The appellant's ground of appeal was that the DLHT erred in law by holding that the appellant had no locus stand while she was the legal owner of the disputed land.

Parties made very brief submissions. The learned Counsel for the appellant Ms. Neema Abdi contended that the DLHT erred in its decision since the evidence at the trial tribunal indicated that the appellant was the legal owner of the land since she was given that land by her father-in-law.

In response, the respondent Counsel briefly submitted that, the matter at the District Land and Housing Tribunal was properly determined and the respondent was the legal owner. He argued that the Chairman departed from the assessors opinions on legal points since the assessors were not aware with the legal points at hand

Before I considered all grounds of appeal and submission by both parties, I have realized some irregularities at the trial Tribunal. Indeed even the respondent's counsel seems to be aware that is why he commented on the assessors opinion and the departure of the

chairman from the opinion of the assessors. I have also gone through the trial Tribunal records observed that those irregularities are indeed incurable. My close perusal of the records revealed that the Hon Chairman for the District Land and Housing Tribunal departed from assessor's opinion without giving his reasons as required by the law. There is no doubt that as indicted under the records that the chairman recorded the opinion of the assessors but he ignored their opinion in his decision without giving any reason. In my opinion, the point of assessors opinion is very valid to be determined at this stage since it is the legal point. The issue is whether he gave reasons as provided by the law under section 24 clearly provides that:

*"In reaching the decision the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion".*

From the above provision it is clear that though the law does not oblige the Chairman to be bound by the opinion of assessors' but according to that provision where he differs with their opinion he must give reasons for differing with such opinion. I went through the Judgment of the District Land Housing Tribunal and noted that

Chairman departed without giving any reasons. For instance the chairman in his judgment at page 3 and 4 had this to say:

*“Assessors of the Tribunal who assisted me in this appeal Mr. Joram F. Masenga and Mrs. Elimamba M. Lula both found the appeal to have no merit as evidence tendered at the Ward Tribunal proved the suit land to be the property of the Respondent herein upon being given the same by her father in law. They thus advised me to dismiss the appeal for having no merit.*

*I have considered the parties’ submissions and evidence in the Ward Tribunal case file together with assessors’ opinions”.*

There is no doubt that the assessors’ admits to have considered the assessors’ opinion but he departed from their opinion without giving his reasons. Indeed the assessors’ put their long opinion that had reasons into writing but the chairman departed from the position of the assessors’ without giving his reasons. If the chairman was not in agreement with the assessors’ opinion he should say so and he should give reasons for not agreeing with their opinion as required by the law. Departing from the assessors’



opinion silently without giving his reasons meant that the chairman misdirected himself in his decision. Indeed the assessors narrated a long story and gave their opinion in detail but he just departed from their opinion without reason. This in my view is contrary to the provisions of the laws. Indeed the composition of assessors and how to deal with their opinion are envisaged under 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] provides that;

*“23 (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 their opinion before the Chairman reaches the judgment.**”*

Having gone through the records of the District Land Housing Tribunal, I observed irregularities that are incurable. My perusal from the records show that the judgment was tainted with irregularities. One of the serious omission or irregularity is the

appellate Tribunal Chairperson to differ with the assessors without giving his reasons. Indeed the position of the law is clear that the Tribunal Chairman must record and consider the assessors' opinion and in case of departure from the assessors' opinion he/she must give reasons. The records show that the Hon Chairman in his judgment did not show if he considered the assessors' opinion apart from just saying he considered their opinion. It is on the records that the chairman in his judgment at page 3 made the following observation:

*\*Assessors of the Tribunal who assisted me in this appeal Mr. Joram F. Masenga and Mrs. Elimamba M. Lula both found the appeal to have no merit as evidence tendered at the Ward Tribunal proved the suit land to be the property of the Respondent herein upon being given the same by her father in law. They thus advised me to dismiss the appeal for having no merit.*

The above paragraph extracted from the judgment shows the Chairman departed from the assessors' opinion without giving reasons. Section 24 the Land Disputes Courts Act, Cap 216 [R.E.2019] clearly provides the requirements for considering the

opinion of assessors' and reasons in case of departure from the opinion. The law under section 24 clearly provides that:

*"In reaching the decision the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion".*

The simple interpretation of the above provision of the law implies that though the law does not oblige the Chairman to be bound by the opinion of assessors' but according to that provision where he differs with their opinion he must give reasons for differing with such opinion. The word **"shall"** under the last paragraph implies mandatory as provided under the law of Interpretation of Law Act, Cap 1 [R.E.2019].

It is clear from the above paragraph of the Judgment that the Tribunal Chairman did not give his reasons for departure from the assessors who gave their long opinion with reasons that were put into writing. I wish to re-emphasize that the chairman is mandatorily bound to comply with both sections 23 and 24 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] before making



his/her decision. For instance section 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] provides that;

*“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 their opinion before the Chairman reaches the judgment.”*

Similarly, Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides that;

*“Notwithstanding sub-regulation (1) the Chairman shall, before making this 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.”*

The above provisions of the laws are clear that the involvement of assessors as required under the law are mandated to give their opinion at the conclusion of the hearing and before the Chairman composes his Judgment. In my considered view, the role of

assessors will be meaningful if they actively and effectively participate in the proceedings before giving their opinion during trial and before judgment is delivered. The Court in **TUBONE MWAMBETA vs. MBEYA CITY COUNCIL, Land Appeal No. 25 of 2015 CAT** at Mbeya (unreported) which cited the case of **SAMSONNJARAI AND ANOTHER vs. JACOB MESOVORO, Civil Appeal No. 98 of 2015** (unreported) had this to say:

*“in determining an appeal which originated from the District Land and Housing Tribunal whereby, the Court said, even if the assessor had no question to ask, the proceedings should show his name and mark “NIL” or else it will be concluded that he/she was not offered the opportunity to ask questions and did not actively participate in the conduct of the trial. The failure of actively and effectively participation of assessors during the proceedings it was declared by the court that the trial a nullity for miscarriage of justice and ordered a trial de novo”*

See also **ABDALLAH BAZAMIYE AND OTHERS vs. THE REPUBLIC**, [1990] TLR 44.

I have no doubt whatsoever that the chairman of the Tribunal is bound to observe Regulation 19 (2) of the Regulations (supra) which require the assessors present at the conclusion of the hearing to give their opinion in writing. However, in the purported Judgment of this appeal at page 3 the chairman did not give any reasons for his departure from the assessors as per 24 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019]. The consequences of such omission was clearly addressed by the court in **TUBONE MWAMBETA case (supra)** at page 16 where it was held that;

*“...the omission to comply with the mandatory dictates of the law cannot be glossed over as mere technicalities....the law was contravened and neither were the assessors actively involved in the trial nor were they called upon to give their opinion before the Chairman composed the judgment. This cannot be validated by assuming what is contained in the judgment authored by the Chairman as he alone does not constitute a Tribunal. Besides, the lack of the opinions of*

*the assessors rendered the decision a nullity  
and it cannot be resuscitated at this juncture  
by seeking the opinion of the Chairman as to  
how he received opinions of assessors...”*

Indeed this court is empowered under the provisions of the laws to exercise its powers under sections 42 and 43 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] to revise the proceedings of the District Land and Housing Tribunals and even the Ward Tribunal if it appears that there has been an error material to the merits. More specifically, section 43 (1) (b) the Land Disputes Courts Act provides that;

*“In addition to any other powers in that behalf conferred upon Supervisory and the High Court, the High Court (Land Division) (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise*

*the proceedings and make such decision or order therein as it may think fit”.*

The underlying object of the above provisions of the two laws are to prevent subordinate courts or tribunals from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. See ***Major S.S Khanna v. Vrig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 409; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406.*** The provisions cloth the High court with the powers to see that the proceedings of the subordinate courts are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *suo mottu*. The court can also do if it is moved by any art as done in this matter at hand.

Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality,

irregularity, correctness and propriety of the decision made by the appellate Tribunal.

Having established that in this case the Chairperson has failed to follow the legal principles that renders the judgment incompetent, the question is, has such omission or irregularity occasioned into injustice to any party?. In my considered view the omission occasioned into miscarriage of justice to all parties. The best way and for the interest of justice is to order the matter to be remitted back for the chairman to re-write the judgement.

In my considered view, there is no any likelihood of causing an injustice to any party if this court orders the remittal of the file for the Tribunal Chairman to properly compose the new judgement immediately. I thus in the interest of justice I order for remittal of the file back to the DLHT for the chairman to re-write the judgment in line with the provisions of the laws. The Tribunal should consider this matter as priority on and deal with it immediately within a reasonable time to avoid any injustice to the appellant or any party resulting from any delay.

It should be noted that all matters that are remitted back for any order need to be dealt expeditiously within a reasonable time.

Having observed that the Judgment at the Tribunal was tainted by irregularities, I find no need of addressing other grounds of appeal.

For the reasons given above, I set nullify the judgment. This matter is remitted to the Tribunal Chairman to re-write the judgment showing how the opinions of the assessors have been considered and in case the chairman differs with their opinion he should give his reasons in terms of section 24 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019].

No order as to the costs. Order accordingly.

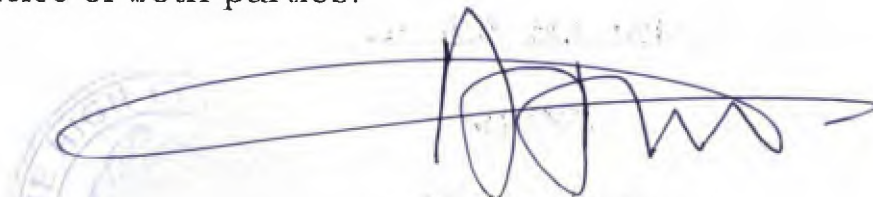


**Dr. A.J. MAMBI, J**

**JUDGE**

**16/08/2021**

Judgment delivered in Chambers this **16<sup>th</sup>** day of **August 2021** in presence of both parties.

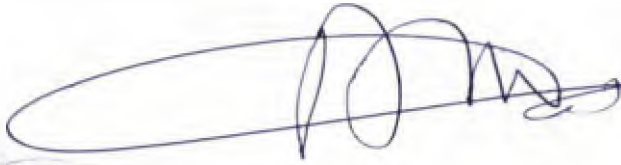


**Dr. A.J. MAMBI, J**

**JUDGE**

**16/08/2021**

Right of appeal explained.



**Dr. A.J. MAMBO, J**

**JUDGE**

**21/10/2020**

