

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

**MISC. LAND APPEAL NO. 36 OF 2020**

*(Originating from Land Appeal No. 01 of 2019 of the District Land and Housing Tribunal at Bukoba and  
Original Civil Case No. 50 of 2018 of Kanyangereko Ward Tribunal)*

**JONATHAN KABWOGI.....APPELLANT**

***VERSUS***

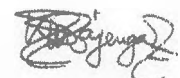
**BENARD BENEZETH.....RESPONDENT**

**JUDGMENT**

*2<sup>nd</sup> August & 27<sup>th</sup> August 2021*

***Kilekamajenga, J.***

The appellant appeared before this Court challenging the decision of the District Land and Housing Tribunal of Bukoba in land appeal No. 01 of 2019. He was armed with four grounds of appeal which I take the discretion not to reproduce them in this brief judgment for the reasons stated below. When the appeal was scheduled for hearing, both the appellant and respondent appeared in person and without representation. The appellant argued that, he was aggrieved with the decision of the Ward Tribunal of Kanyangereko. Despite tendering documentary evidence, however the Ward Tribunal did not consider it. Thereafter, he narrated a long story on how he owned the disputed land. He generally complained against the respondent who encroached into the land and cut some trees.

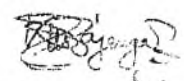


On the other hand, the respondent argued that he inherited the land from his father in 2002. The Ward Tribunal visited the land and witnessed the boundaries and finally decided in his favour. The boundaries of the land were set in 2009; the Ward Tribunal ordered the replacement of the tree boundaries which had dried. The appellant appealed to the District Land and Housing Tribunal which also decided in favour of the respondent.

When rejoining, the appellant did not raise any substantial argument than reiterating the submission in chief.

When composing the judgment, I noticed an anomaly on whether or not the assessors were invited to give their opinions before the chairman composed the judgment. The parties appeared and their response was just simple; that the assessors' opinions appear in the judgment. I am therefore obliged to enlighten on the rationale of involving assessors at the District Land and Housing Tribunal. The law requires the chairman to sit with not less than two assessors. The presence of the chairman alone does not constitute the coram of the tribunal.

**Section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 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; and*

*(2) The District Land and Housing Tribunal shall be dully constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment".*

The above provision of the law is further emphasized in **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** thus:

*"19 (1) The tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgment on the spot or reserve the judgment to be pronounced later;*

*(2) Notwithstanding sub – regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give opinion in Kiswahili".*

Moreover, the chairman is obliged to consider the assessors' opinions, though, he is not bond to follow the opinions if he has reasons to depart from. However, he/she must give reasons for the departure as it is provided under **section 24 of the Land Disputes Courts Act** thus:

*"24. In reaching decisions, the chairman shall take into account the opinion of assessors but shall not to be bond by it, except that the*

Furthermore, a similar situation occurred in the case of **Ameir Mbarak and Azania Bank Corp. Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015 (unreported)** and the Court of Appeal of Tanzania had the following to say:

*"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessor which is not on the record by merely reading the acknowledgement of the chairman in the judgment. In the circumstances, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the tribunal's judgment and this was a serious irregularity."*

Similarly, in the land mark case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported)**. The Court of Appeal of Tanzania reiterated the above stance of the law. In that case Hon. Mugasha, JA further insisted that:

*"...Such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the chairman in the final verdict."*

The Court of Appeal further stated that:

*"...the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the tribunal, it embraces giving*

*their opinions before the determination of the dispute. As such, **their opinion must be on record.***" (emphasis added).

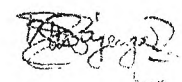
See also, the cases of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil appeal No. 286 of 2017, CAT at Mbeya (unreported); **General Manager Kiwengwa stand Hotel v. Abdallah Said Mussa**, Civil Appeal No. 13 of 2012; **Y. S. Chawalla and Co. Ltd v. DR. Abbas Teherali**, Civil Appeal No. 70 of 2017.

In the case at hand, the proceedings of the trial tribunal show that, on 15<sup>th</sup> January 2019 when the case came for assessors' opinion there were however no such opinion recorded in the proceedings. However, such opinions only appear in the judgment but they are not in the proceedings. Under the law, it is as good as, assessors were not fully involved. This irregularity is sufficient to nullify the proceedings of the trial tribunal. I hereby quash the proceedings of the District Land and Housing Tribunal and set aside the decision thereof. I however uphold the decision of the Ward Tribunal that decided in favour of the respondent. No order as to costs. It is so ordered.

**DATED at BUKOBA** this 27<sup>th</sup> day of August, 2021.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**27/08/2021**



**Court:**

Judgement delivered this 27<sup>th</sup> August 2021 in the presence of all the parties present in person. Right of appeal explained to the parties.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**27/08/2021**

