

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND CASE APPEAL NO. 31 OF 2021

(Arising from DLHT For Kagera at Bukoba, Land Appeal No. 68 of 2018 and Original Civil case No.23 of 2018 of Kyaka Ward Tribunal)

SHADRACK NATHANIEL KALAMA-----APPELLANT

VERSUS

CHRISTOPHER MATIN MTEJU-----RESPONDENT

RULING

18/08/2021

NGIGWANA, J.

In the Ward Tribunal of Kyaka, the respondent Christopher Matin Mreju successfully sued the appellant Shadrack Nathaniel Kalama for trespassing into a piece of land of the late Matini Mreju.

Aggrieved, the Appellant preferred an appeal to the DLHT but the same ended being dismissed for want of merit. Again, the appellant was aggrieved hence this second appeal. The grounds of appeal raised are as follows;

1. That the appellate DLHT grossly misdirected itself and erred in law to disregard the principle laid down by the Superior Court and decide otherwise over the matter.
2. That the appellate Tribunal misdirected itself to decide that the misinterpretation of the evidence adduced by the witness in favor of the appellant during the trial being interpreted by the trial tribunal in favor of the respondent is not a ground to quash the proceedings of the Ward Tribunal without taking into consideration that the same changes the meaning of the evidence from the appellant's side to respondent's side. Wherefore prays that this appeal be allowed with costs.

The Respondent in his reply to petition of appeal disputed all the grounds and prayed for the dismissal of this appeal with costs for want of merit.

When the matter was called up for hearing, the appellant was represented by Mr. Abel Rugambwa, learned counsel, while the Respondent was represented by Mr. Zedy Ally.

At the outset, before commencing the hearing, Mr. Rugambwa addressed the court that he had prepared the grounds of appeal basing on the copy of judgment only because the proceedings of the Tribunal were not availed to him on time, and that, having made a keen perusal on the proceedings supplied to him, he discovered the non-compliance of section 23 (2) of The Land Disputes Courts Act, Cap 216 R:E 2019 and Regulation 19(2) of GN. No. 174/2003 since the opinions of assessors were not read to the parties to the case before the judgment is composed. He

added that, the only remedy under the circumstances is retrial, and as regards the question of costs, he prayed that since the irregularity was not caused by the parties to the case, let each party bear its own costs.

On his side, Mr. Zedy Ally, learned counsel for the respondent conceded to that position of law, and to the prayer that the irregularity was not caused by the parties but the Tribunal itself thus the respondent should not be condemned to pay costs.

Now, the main duty of the court here is to determine whether the pointed-out irregularity existed, and if yes, whether it is capable of vitiating the proceedings of the appellate Tribunal.

The composition of the District Land and Housing Tribunal is stated under section 23 (1) of the Land Disputes Courts Act, Cap 216 R: E 2019 which provides;

*“The District Land and Housing Tribunal established under section 22 **shall be composed of one Chairman and not less than two assessors**”*
(Emphasis supplied)

Assessors are not the court ornaments and they are not there by accident, and without them the tribunal cannot be said to have been duly constituted, and before reaching the judgment, assessors must give out their opinion.

Section 23 (2) of the Land Disputes Courts Act, Cap 216 which provides;

*“The District Land and Housing Tribunal shall be constituted when held by a chairman and two assessors **who shall be required to give out their***

opinion before the Chairman reaches the judgment" (Emphasis supplied)

Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations; 2003 imposes a duty upon the Chairman/Chairperson to require every assessor present at the conclusion of the hearing, to give his/her opinion writing. The same provides;

"Notwithstanding subsection (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".

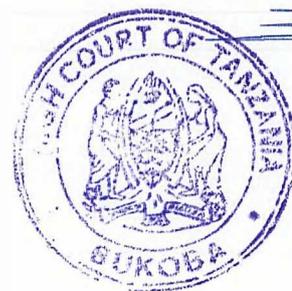
In the case at hand, it is not reflected in the court record that Chairman ever required the Assessors namely; H. Muyaga and L. D. Mpanju to give their opinion. Surprisingly, the Chairman reproduced what he termed as opinions of both assessors. It is not clear at all as at what stage and at what time the opinions found their way in the court record. The record does not show that the same were ever read in the presence of the parties to the case before the judgment is composed. Such an irregularity renders the opinion useless/something of no useful purpose. The non-compliance of section 23 (2) of The Land Disputes Courts Act, Cap 216 R: E 2019 and Regulation 19(2) of GN. No. 174/2003 is incurable irregularity. This position was emphasized by the Court of Appeal of Tanzania in the case of **EDINA ADAM KIBONA VERSUS ABSOLOMSWEBE(SHELI)**, Civil Appeal No. 286 of 2017.

In the event, I nullify the entire proceedings and judgment of the Trial Tribunal. Subsequent orders thereto are set aside. For the interest of justice, I order an expedited retrial before the District Land and Housing Tribunal for Kagera, at Bukoba presided over by another Chairman/Chairperson sitting with a new set of assessors. Each party shall bear its own costs.




E.L. NGIGWANA
JUDGE
18/08/2021

Typed ruling delivered this 18th day of August, 2021 in the presence of both parties in person, Mr. Abel Ruganbwa, learned Advocate for Appellant, Mr. Zedy Ally, learned Advocate for Respondent and Mr. E. M. Kamaleki, Judges' Law Assistant.

E.L. NGIGWANA
JUDGE
18/08/2021