

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 19 OF 2021**

**MAINGU BUGINGO ..... APPELLANT**

***VERSUS***

**TEZIRA MNUBI ..... RESPONDENT**

***(Appeal from the decision of the District Land and Housing Tribunal  
for Mara at Musoma in Appeal No. 50 of 2020)***

**JUDGMENT**

19<sup>th</sup> August and 10<sup>th</sup> September, 2021

**KISANYA, J.:**

The appellant sued the respondent in the Nyamrandirira Ward Tribunal in Land Case No. 1 of 2020 over invading into his land and erecting two buildings thereon. Although the case was heard *ex parte*, the appellant lost. He appealed to the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 50 of 2020. The first appellate tribunal nullified the proceedings and judgment of the trial tribunal on the ground the appellant had no *locus standi* to institute the case.

Feeling that the justice was not served to him, the appellant through the legal services of Baraka Makowe (Advocate) lodged the present appeal. He is armed with the following three grounds of appeal.

- 1. That the appellate Chairperson erred on point of law when he failed to point out in his judgment any opinion of the assessors in respect of the proceedings before the tribunal on appeal.*
- 2. That the appellant (sic) chairman erred on point of law and facts to order that the respondent be using the land despite the fact he had quashed the proceedings of the trial tribunal.*
- 3. That the evidence of the appellant was not anyhow controverted, the appellant chairman erred on point of law:*
  - a) To determine the appeal on issue which the appellant was not afforded an opportunity to argue.*
  - b) That the proceedings before the Ward Tribunal were misapprehended and the appellate tribunal non (sic) directed itself on it and wrongly applied then to the disadvantage of the appellant.*

At the hearing of this appeal, Mr. Baraka Makowe, learned advocate appeared for the appellant while the respondent had the service of Mr. Daud Mahemba, learned advocate.

In their respective submission the learned counsel for both parties supported the first ground of appeal. They pointed out that despite sitting with two assessors who gave their opinion on the appeal, the judgment composed by the learned chairperson did not reflect the assessors' opinion. In that regard, both counsel were of the view that the assessors were not

properly involved and that the omission affected the judgment of the first appellate tribunal. Mr. Makowe submitted further that the omission contravened regulation 19(2) of the Land Disputes (District Land and Housing Tribunal) Regulation, 2003. Therefore, he moved me to quash the said judgment.

I have reviewed the entire records and the submissions by the learned counsel. Noteworthy is that, the role of the assessors is creature of the law. The starting point is section 23 (1) of the Land Disputes Courts Act [Cap. 216, R.E. 2019) (the LDCA) which provides that the composition of the District Land and Housing Tribunal (DLHT) include, the Chairman and not less than two assessors. One of the roles of assessors is to provide opinion at the end of hearing. In terms of section 23(1) of the LDCA the chairman of the DLHT is obliged to require the assessors present to give their respective opinions in writing before composing his or her judgment. This duty is also provided for under regulation 19(2) of the Regulations which reads as follows:-

*"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."*

Now, in order the presence and the above role of assessors to have meaning, the law requires the chairman to consider the opinion of

assessor's before arriving at his final verdict. This legal requirement is provided for under section 24 of the LDCA which is reproduced hereunder:

*"In reaching decisions 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 above cited provision is couched in mandatory terms. This implies that the chairman is duty bound to consider the assessors opinion even if he is not at one with them. This position was also stated in **Zubeda Hussein Kayagali vs Oliva Gaston Luvakule and Another**, Civil Appeal No. 312 of 2017, CAT at Tabora (unreported) when the Court of Appeal held that:

*"Additionally, before the Chairman reaches the final verdict, he is supposed to consider the opinion of the assessors though not bound by it but should give reasons for such differing with such opinion. ... Therefore, in order to comply with this provision of law, the Chairman should receive the opinion of assessors and consider it in the judgment."*

The Court of Appeal went on hold that the failure by the chairman of the DLHT to involve the assessors in reaching the decision vitiated the proceedings and judgment of the Tribunal and that the effect was to nullify the proceedings.

In the case at hand, the records bear it out that, at the hearing of the first appeal, the chairman sat with two assessors namely, Perucy Milambo and M.S. Matiko. When asked to give their opinions, both assessors were of the view that the appeal was meritorious. Thus, they opined that the appellant was the lawful owner of the disputed land.

However, in his judgment, the learned Chairman did not consider the assessors' opinion at all. Although he was not bound by the said opinion, the reasons for not considering the same ought to have been given. Therefore, in view of the stated position of law, the assessors were not involved in reaching the final verdict. I agree with Mr. Makowe, the said omission vitiated the judgment of the first appellate tribunal. Therefore, I find merit in the first ground of appeal.

That aside, the chairman's decision was based on the issue of *locus standi* raised in the reply submission to the grounds of appeal. Since the appeal before the first appellate tribunal was lodged by the appellant, the learned chairperson ought to have asked him to address on that issue. Otherwise, it appears that the decision of the first appellate tribunal was based on the issue of *locus standi* that was not properly raised before it. I think that is why the assessors did not opine on the same. In consequence, I find merit in ground 3(a) of the petition of appeal that the parties were not accorded a fair hearing on the issue which formed the basis of it

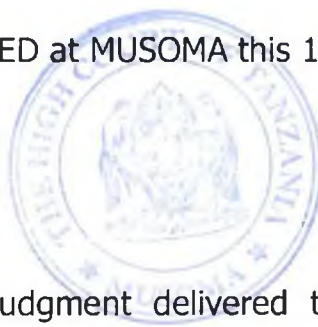
decision. The law is settled that a trial in which parties are not accorded the right to a fair hearing is a nullity. Thus, the proceedings of the first appellate were also vitiated.


In the premises, I find it not useful to address other issues pertaining to this appeal. The above discussed issues suffice to dispose of the appeal.

For the reasons I have endeavored to state, I hereby nullify the entire proceedings of the first appellate tribunal, quash and set aside the judgment and decree thereon. Eventually, I order that the appeal be heard afresh before another chairman and a new set of assessors. As the parties are not to be blamed for the said anomalies, I refrain from awarding costs. That is to say, each part shall bear its own cost.

It is so ordered.

DATED at MUSOMA this 10<sup>th</sup> day of September, 2021.



  
E.S. Kisanya  
JUDGE

COURT: Judgment delivered this 10<sup>th</sup> day of September, 2021 in the presence of both parties in persons. B/C Gidion present.

Right of appeal explained.



  
E. S. Kisanya  
JUDGE  
10/09/2021