

**IN THE HIGH COURT OF TANZANIA
(SONGEA DISTRICT REGISTRY)
AT SONGEA
LAND APPEAL NO. 1 OF 2020**

(Originated from land application No. 18 of 2017 at District Land and Housing Tribunal for
Ruvuma at Songea)

ROMWARD MAURUS MBILINYI..... APPELLANT

VERSUS

SERIKALI YA KIJJI CHA UTWANGO1ST RESPONDENT

BRASIUS NYONI.....2ND RESPONDENT

KENEDY NYONI.....3RD RESPONDENT

RIZIWANI MAYUMBA.....4TH RESPONDENT

EMMANUEL FUSSI.....5TH RESPONDENT

RENATUS KILOWOKO.....6TH RESPONDENT

EMELIUS MBAWALA.....7TH RESPONDENT

ERNEST FUSSI.....8TH RESPONDENT

JUDGEMENT

24.08.2021 & 21.09.2021

U. E. Madeha, J.

Aggrieved by the decision of the District Land and Housing Tribunal, the appellant, Romward Maurus Mbilinyi, appealed to this court. The respondents, Serikali ya Kijiji cha Utwango, and seven others, are disputing over a piece of land which is approximated to be 30 acres of land located at

Utwango Village within Namtumbo District. The appellant asserts that he is the rightful owner of the land because it was his grandfather's property before he died in 2001. The appellant's grandfather owned the area from 1939 up to 1977. The appellant asserts that, he is the rightful owner of the land because it was his grandfathers' property before he died in 2001. The respondents claims that 70 acres which were allocated to the village council in 1977 were given by the appellant's grand father by his own free will. he tendered in court the minutes of the village meetings held in 1977. The minutes of the villagers' meeting were received in court as exhibit D1. The second respondent said when the villagers were established in 1977, there was no land and for that reason, the village could not exist. So the villager's old men suggested that the farm which is the subject matter of the current dispute be the village farm. The first respondent was given plot of land freely. The District Land and Housing Tribunal held that the first respondent is the owner of the disputed 30 acres located at Kinuri harmlet. The remaining respondents are there for the benefit of the first respondent, who is the legal owner of that land, which does not amount to trespass. In view of the

grounds of appeal raised, the issue here is whether the court assessors expressed their opinion.

The issue is whether the court assessors expressed their opinion. Mr. D. P. Ndunguru, advocate for the appellant, submitted that the tribunal erred in law by allowing the assessors to cross examine the witnesses. Assessors are not allowed to cross examine witnesses. The court assessors did not express their opinion. On the other hand, Mr. Alto Andrew Liwolelu, state attorney for the respondents, submitted that the questions by assessors intended to get clarification of what the appellant advocate claimed were baseless and had no legal basis in the eyes of the law. He prayed that this appeal be dismissed.

I have gone through the Tribunal records and found that there was no assessor's opinion, but every time a witness finished giving his testimony, the court assessors asked questions. The records apparently clearly show that the assessors did not file their opinion as required by the law. The assessors' opinion must be seen in the proceedings in order to have a meaningful effect as required by the law. By considering the issue of the assessors' opinion, **section 23 (1) and (2) of the Land Disputes Courts Act (Cap.216 R.E 2019)** (the Act) states that.

23.-(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a 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 opinion before the Chairman reaches the judgment."

This case is very similar to the case of **Zubeda Husdein Kayagali Versus Oliva Gaston Luvakule and Tunu James Gwoma** Civil Appeal No. 312 of 2017, Court of Appeal Tabora. The Court observed that

"Before the chairman reaches the final verdict, he is supposed to consider the opinion of the assessors through not bound but should give reasons for such a difference in opinion." This is the requirement of section 24 of the Act, which provides that:

"24. 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."

Therefore, in order to comply with the provision of the law, the Chairman should receive the opinion of the assessors and consider it in a judgement.

In order for the trial to be taken to have been effectively conducted with the aid of assessors, the chairman ought to require each assessor present to give his/her written opinion and the same be read over to the parties for them to know the nature of the opinion which will be conducted by the chairman in the judgement."

In this case, the assessors of the Tribunal were asking questions. All that is required is to give their opinion. The assessors' opinion has to be in writing as mentioned under **section 23 (2) of the Land Disputes Courts Act Cap 216 R.E 2019 and Regulations 19 (2) of the Land Courts (The District Land Housing Tribunal) Regulations GN No. 174/2003** states:

" Notwithstanding sub-regulation (1) the Chairman shall, before making his judgement, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give his opinion in kiswahili."

Consequently, on the strength of the law and cited authorities, I find that the failure by the Tribunal Chairman to involve the assessors in reaching the decision and allowing the assessors to cross examine the witnesses vitiated the proceedings and judgement. The effect was to nullify the proceedings. In the circumstances, I invoke the revision power under **section 43 (3) of the Land Disputes Courts Act, (Cap 216 R.E. 2019)** and nullify the proceedings and set aside the judgement. Since this issue is sufficient to dispose of the appeal, I do not find it useful to address the aspect of the other grounds of appeal. Thus order a retrial of the case before a different Chairman and new set of assessors. I make no order as to costs because the issues leading to the determination of the appeal were raised by the court suo motu.

DATED and **DELIVERED** at **SONGEA**, on 21st day of **SEPTEMBER** 2021.




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U. E. MADEHA
Judge
21/9/2021