

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MOSHI DISTRICT REGISTRY)**

**AT MOSHI**

**LAND APPEAL NO. 49 OF 2020**

(C/F Application No. 21 of 2016 in the District Land and Housing Tribunal for Same at  
Same (Hon. T.J. Wagine, Chairman))

**NOIMI DAVID MFINANANGA.....APPELLANT**

***VERSUS***

**FREEDOM ABDUEL KISAKA..... RESPONDENT**

03/08/2021 & 20/10/2021

**JUDGMENT**

**MWENEMPAZI, J:**

The appellant sued the respondent at the District Land and Housing Tribunal claiming ownership of a suit land measuring 70 paces long and 60 paces wide located in Mruma village at Mwevo area within Mwanga District. She claimed that the respondent since 2012 trespassed in the suit land by cutting down timber trees worth 1,770,000/- Tshs and also demolished the hut which was used for animal keeping. She further claimed that despite being demanded to leave the suit land several times the respondent had refused. The respondent on the other hand despite being served he never filed his written statement of defence as ordered. It was for that reason the tribunal heard the matter ex-parte.



Upon hearing the appellant who was represented by her daughter one Beatrice Enosy, the learned Chairman found that the evidence given by the appellant failed to prove her case and thus he dismissed the application.

The appellant was aggrieved and filed this appeal based on three grounds as reproduced hereunder:

1. That trial chairman erred in law and in fact for not recording the framed issues called for proper determination of the matter.
2. That trial chairman erred in law and in fact for holding that the evidence of single witness did not suffice to decide the matter in favour of the appellant. That the chairman failed to consider the fact that the respondent appeared on different occasions but did not even challenge the application through written statement of defence. Further that the chairman ought to have decided the matter giving a benefit of doubt to the appellant.
3. That the trial chairman erred in law and in fact recording the opinion of assessors for by holding that the trial tribunal has no jurisdiction to entertain the matter as a result of misdirection by the chairman that dispute was not on ownership of the suit land. Further that the chairman wrongly directed that the matter be filed at the probate court.

In this appeal the respondent was nowhere to be found, summons was issued to the chairman of the village which he was residing but the chairman notified this court that the respondent has not been in the village for a long time. Due to the circumstances, the hearing was ordered to



proceed ex-parte and the appellant was ordered to file written submission in support of her appeal.

It was the appellant's submission with respect to her first ground of appeal that the tribunal decided the application without framing issues which was contrary to the law as provided for under regulation 12(3) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN No. 174 of 2003. She submitted that this law requires the tribunal to frame issues before hearing the application for proper determination of the matter, however the tribunal did not bother to record and frame issues before hearing started. She contended that failure to record and frame issues rendered the proceedings and decision of the tribunal a nullity. She supported her argument with the case of **ODILO LEONARD v. JOHN BOSCO TIIBIKA**, Land Appeal No. 17 of 2012 as cited with approval in **CHARLES BAKEBUKI VS GODELIVA EVARISTA AND JULIAN MWANUZ1** Land Case Appeal No 92 of 2020 (HCJ at BUKOBA {Unreported} at page 3. It was the appellant's submission that that the decision of the District Land and Housing Tribunal was null and void for want of issues which brought the application.

On the second ground of appeal the appellant submitted that the tribunal was erroneous in holding that the evidence adduced by the appellant was not believed for the reason that it was not corroborated while the same was not challenged by the respondent. She argued that the holding was contrary to the provision of section 143 of the Evidence Act which provides that; *Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for proof of any fact.* In

relation to this provision the appellant submitted that the evidence of a single witness was enough to determine the matter. She further submitted that she was entitled to be believed by the trial chairman since there was no cogent reason for doubting her.

Finally on the third ground the appellant submitted that the matter before the tribunal was a land matter and the applicant's claim being trespass over the land therefore the question that the trial tribunal was supposed to answer was whether the suit property was the property of the appellant and whether the respondent was a trespasser? However, the appellant submitted that the trial tribunal did not bother to frame the issues or answer them but rather misdirected itself by establishing the fact that the matter was about ownership and the appellant failed to prove her ownership. She referred to page 2 of the ex-parte judgment where the chairman stated that the fact that the appellant was given the said land by her father in 1955 has not been supported by any evidence.

Having carefully gone through the grounds of appeal and the submission of the appellant in support of the appeal, I will proceed to determine the appeal based on the issue whether the appeal is meritorious.

As I was examining the grounds of appeal, I noted that on the third ground the appellant mentioned the issue of assessor's opinion. The appellant did not elaborate this issue in her submission I suppose it may be due to her being a lay person in law but I find this issue to be very relevant and if it is addressed it is capable of disposing the appeal.





I have carefully examined the records of the trial tribunal in relation to the grounds of appeal added and in particular the third ground which had a mixture of issues including the issue of assessor's opinion. I noted that the assessor's opinion which the chairman of the tribunal referred to in his decision were not reflected anywhere in the tribunal proceedings. Not only that but also it is not clear whether assessors were present or not. The records are silent as to who were the assessors and whether they were present during the hearing or not. Assessors are not featured in the coram but in the end after the applicant/appellant gave her testimony on page 6 of the tribunal's proceedings show that three persons named **Anna Kivia** and **Mwandah** asked questions including the chairman. This is so irregular and it invalidates the entire proceedings of the tribunal.

It is a requirement of the law that for the tribunal to be properly constituted it must be composed by a chairman and not less than two assessors. This is clearly provided for under **section 23(1) of the Land Disputes Courts Act**, (Cap 216 R.E. 2019) the law states;

***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 (emphasis added)***

The law also requires the chairman to obtain assessors opinion before reaching judgment. This is provided for under section **23(2) of the Land Disputes Courts Act**, (Cap 216 R.E. 2019) which states;

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*(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** (emphasis added)*

This duty is further elaborated in the regulations made under the above law, that is, Land Disputes Courts (the District Land and Housing Tribunal), Regulations, 2003. Regulation 19 (2) provides;

*19 (2) 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 Kiswahiii. [Emphasis provided]*

As the above provisions clearly indicate, the presence of assessors in the District Land and Housing Tribunal is of paramount importance including their opinion before reaching judgment. In this case, although the opinion of assessors is not shown in the tribunal proceedings, the chairman of the tribunal made reference to it as can be seen on the last paragraph at page 2 of the ex-parte judgment that the assessors gave their opinion and he actually stated that opinion. The Court of Appeal of Tanzania in the case of **Edina Adam Kibona vs. Absalom Swebe (Sheli)** Civil Appeal No. 286/2017, held that;

*"Therefore, in our 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"*

The Court of Appeal further observed in the same case that

*"In view of the settled position of the law, where the trial has to be conducted with the aid of the assessors, ... they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed. ... since Regulation 19 (2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, **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 [Emphasis supplied].*

In view of the above cited authorities, I find that the chairman of the tribunal failed to comply with the mandatory provision of the law which in effect makes the entire proceedings a nullity and the judgment is thus defective.

I therefore find merits in this appeal, and proceed to nullify the proceedings, quash the judgement and set aside the decree issued by the

trial chairman. I hereby order retrial before another chairman with new sets of assessors. It is so ordered.

DATED at Moshi this 20<sup>th</sup> day of October, 2021.



  
**T. MWENEMPAZI**  
**Judge**  
**20/10/2021**