

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**LAND CASE APPEAL NO. 64 OF 2021**

*(Arising from DLHT For Ngara at Ngara in Land Application No.14 of 2016 )*

**PEACE RUSHANGO** (Adm of the estate of the late Scott Rushongo) **...APPELLANT**

**VERSUS**

**RUTH YOSIA BULANGWAHE..... RESPONDENT**

**JUDGMENT**

**23/09/2021& 15/10/2021**

**NGIGWANA, J.**

In the District Land and Housing Tribunal for Ngara at Ngara the appellant sued respondent for encroachment into the disputed land located at Mgashi Sub- village, Runzenze Village, Ward of Ntobye within Ngara District in Kagera Region whose value is estimated to be Tshs 5 five Million (**Tshs 5,000,000/=**).

At the end of the hearing, the case was decided in favor of the respondent. Being dissatisfied with the decision, the appellant knocked the doors of this Honorable Court to fight for his rights.

The appellant who through the services of Mr. Bitakwate, learned advocate filed five (5) grounds as here under;

1. That the Land and Housing Tribunal for Ngara erred in law in giving a judgment without seeking and obtaining the opinions of Assessors contrary to the law, making the said judgment and orders a nullity
2. That the trial Chairman erred in law in failing to follow the laid down procedures in visiting the locus in quo and relying on the evidence obtained during the purported visit to make his decision, making the decision a nullity
3. That the Land and Housing Tribunal for Ngara erred in law and fact in holding that the respondent is the legal heir of the suit land from the late Yosia Bulangwahe without any evidence to establish the late Yosia Bulangwahe's title over the suit land
4. That the District and Housing Tribunal erred in law in basing its decision on the boundaries purported to have been established over the suit land by the Runzenze Village Government in 2005, while the Village Government has no powers to establish the boundaries over the appellant's legally owned land.
5. That the trial Chairman erred in law and fact in giving a biased and contradictory judgment which is not supported by evidence on record.

Wherefore, the appellant prays for these orders; that the proceedings and decision of the trial tribunal be quashed and set aside for being a nullity, the respondent be declared a trespasser to the suit land, and 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.

When the matter was called up for hearing, Mr. Bitakatwe, learned counsel for the appellant drew the attention of the court that ground No.1 if argued will suffice to dispose this appeal. Mr. Abel Rugambwa, learned advocate for the respondent conceded to that fact. Since the legal position as to the consequences of the improper involvement of assessors in the trial conducted by the aid of assessors is clear, the parties were called upon to make their submissions as per their prayer.

Mr. Bitakwate submitted that, the trial tribunal conducted the trial with the aid of assessors but finally, the said assessors were not afforded an opportunity to give their opinions and the omission offended section 23(2) of the Land Disputes Courts Act, Cap 216 R: E 2019 and regulation 19(2) of GN.No.174 of 2003. Mr. Bitakwate referred the court to the typed proceedings in which after visiting the locus in quo, the judgment date was fixed to wit; 26/03/2018, though it was delivered on 26/07 2018. Nowhere is shown that the assessors did give the opinion before the same is composed, but surprisingly, the Chairman in page 4 and 5 of typed judgment indicated that he considered the opinion of assessors. Bitakwate referred the court to the case of **Edina Adam Kibona versus Absalom Swebe (Sheli)**, Civil Appeal No.286 of 2017 where the court held that it is unsafe to assume the opinions of the assessors which are not in the record by merely reading the acknowledgment of the Chairman in the judgment. The learned counsel ended his submission urging the court to allow the

with costs, quash the proceedings, set aside the judgment and orders of the trial tribunal.

On his side, Mr. Abel Rugambwa, conceded with the submissions of appellant's advocate that assessors were not properly involved in the conduct of this case and that the omission renders the proceedings a nullity. However, he differed with him on costs. Mr. Rugambwa urged the court not to grant costs because the irregularity was not caused by the parties but the tribunal itself.

Now, the main duty of the court here is to determine whether this appeal is meritorious. 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 decorations 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; G.N No.174 of 2003 imposes a duty upon the Chairman/Chairperson to require every assessor present at the conclusion of the hearing, to give his/her opinion in 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**".*

The record of proceedings of the DLHT as correctly submitted by both counsels shows vividly the names of the assessors involved in the hearing the application being **Esther Kokuntensa and Justice Muyogoro**. Nowhere is shown that the assessors gave their opinion though the Chairman (**R. E. Assey**) in the judgment delivered on 07/11/2018 referred opinions alleged to have been given by the said Assessors. Since the proceedings are silent as to how the opinions referred by the Chairman were obtained and since they were not found in the tribunal record (if any) and were not read and explained to the parties, the omission is fatal.

In the case of **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (unreported), the Court of Appeal held that; *"In view of the settled position of the law where the trial has to be conducted with the aid of the assessor 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"***

A similar position was maintained in **Edina Adam Kibona** (Supra) where the Court of Appeal stated: -

*"We wish to recap at this stage that the trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of evidence, in terms of Regulation 19(2) of the Regulations, the Chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili. That opinion must be in the record and must be read to the parties before the judgment is composed. For the avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in view of the fact that the record does not show that the assessors were required to give them, we fail to understand how and at what stage they found their way in the court record. And in further view of the fact that they were not read in the presence of the parties before the judgment was composed, the same have no useful purpose".*

Given the above position of the law in respect of the role of Assessors, and what transpired in the District Land and Housing Tribunal it is obvious that the District Land and Housing Tribunal failed to keenly involve the assessors while hearing the current matter. For that reason, the

proceedings and the judgment were a nullity. Consequently, the proceedings are quashed, the judgment and orders thereto are set aside. I direct the appeal to be heard afresh before another Chairman/Chairperson and a different set of assessors. Since the omission was not caused by the parties, each party to bear its costs.

It is so ordered.



E. L. NGIGWANA

JUDGE

15/10 /2021

Judgment delivered this 15<sup>th</sup> day of October, 2021 in the presence of the appellant in person, advocate Mr. Bitakwate, also holding brief for Mr. Abel Rugambwa, learned advocate for the respondent, E.M. Kamaleki, Judges' Law Assistant and Gosbert Rugaika B/C.



E. L. NGIGWANA

JUDGE

15/10 /2021

