

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 61 OF 2021

(Arising from Application No. 74 of 2015 of the District Land and Housing Tribunal for Kagera)

ENG. JUSTIN D. RWEYEMAMU.....APPELLANT

VERSUS

JAMES RUGAKINGIRA.....1ST RESPONDENT
HAMIS SAID.....2ND RESPONDENT
TUMAIN MTAZAMBA.....3RD RESPONDENT
REV. FRANCIS PAUL.....4TH RESPONDENT

JUDGMENT

26th October & 29th October 2021

Kilekamajenga, J.

The appellant, after being aggrieved with the decision of the District Land and Housing Tribunal for Kagera at Bukoba, preferred the instant appeal. He was armed with three grounds of appeal thus:

- 1. That, the trial tribunal grossly erred in law and fact by holding that allocation of land to the applicant was unlawful for failure to acquire the same compensate the owner of the same without recording and considering properly the evidence of the appellant and his witness PW2 which are not revealed in the judgment.*
- 2. That, the trial tribunal did grossly erred in law for condemning the appellant without conducting a fair trial of being fairly heard which violates the principle of natural justice.*



3. That, the trial tribunal misdirected itself by dismissing the application with costs against the appellant without recording the opinion of assessors who constituted the tribunal and the reasons of departing from the same.

The appeal finally came for hearing, the appellant was absent but his counsel, the senior learned advocate, Mr. Josephat S. Rweyemamu was present and ready to assist the court in reaching justice in this matter. The respondents, who have not been appearing despite having summons about the case were absent. The court ordered the case to proceed in their absence. Mr. Rweyemamu confined the submission on two vital legal issues in this matter. **First**, the trial of the case commenced before RE Assey (chairman) and issues were framed. Under **Regulation 12(3) (b) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations of 2003**, the hearing of the case always commences with the framing of issues. Later, the case shifted hand to another chairman without complying with **Order XVII, Rule 10(1) of the Civil Procedure Code, Cap. 33 RE 2019** which requires the successor magistrate/chairman to give reasons for taking over the case. **Second**, **Regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation 2003** requires the chairman to take assessors' opinion before composing the judgment. The judgment of the trial tribunal was delivered without assessors' opinion something which violated **Regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunal)**



Regulation 2003. Furthermore, the trial chairman seemed to depart from the assessors' opinion without giving reasons something which violated section 24 of the Land Disputes Courts Act. These irregularities vitiated the proceedings of the trial tribunal. The counsel referred the court to the case of **Kinondoni Municipal Council v. Q Consult LTD, Civil Appeal No. 70 of 2016**, CAT at Dar es salaam (unreported); **Edna Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017**, CAT at Mbeya (unreported). Finally, the counsel urged the court to quash the proceedings and decision of the trial tribunal and order the retrial of the case before another chairman and a new set of assessors.

I wish to begin with second legal issue argued by the counsel for the appellant. This court and the Court of Appeal of Tanzania have reiterated in a number of cases on the essence of observing the requirement of recording assessors' opinion before the chairman of the District Land and Housing Tribunal may compose a judgment. This requirement is not a luxury that the tribunal chairman may decide to distance with rather the law obliges him or her to abide because failure to do so fatally vitiates the proceedings and the decision thereof. For academic purposes and advocating further on the need to observe the law, I take time again, at least in the upshot, to reiterate the already vast jurisprudence in this area. The composition of the District Land and Housing Tribunal cannot be fully constituted unless chaired by a chairman and not less than two assessors.



Section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 2019 provide thus:

"23 (1) The District Land and Housing Tribunal established under Section 22 shall be composed of one chairman and not less than two assessors; and

(2) The District Land and Housing Tribunal shall be dully constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment".

The above provision of the law is further emphasized in **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** thus:

"19 (1) The tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgment on the spot or reserve the judgment to be pronounced later;

(2) Notwithstanding sub – regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give opinion in Kiswahili".

The presence of assessors during the trial was not meant to increase the number of members but ensure participatory decision making in land matters which seem to touch the community. The requirement is also meant to ensure that justice process involves the community which are stakeholders of the dispute. Assessors

who come from the community where the dispute arose assist the chairman in reaching a judicious decision. Though the chairman is not bound with the assessors' opinion, he/she cannot opt-out the requirement of recording their opinions before composing the judgement. Also, the departure from the assessors' opinion leads to another bounding requirement to give sufficient reasons. For clarity, I wish to revisit **section 24 of the Land Disputes Courts Act** which provides that:

"24. In reaching decisions, the chairman shall take into account the opinion of assessors but shall not to be bound by it, except that the chairman shall in the judgment give reasons for differing with such opinion".

After the hearing of the witnesses, the chairman must schedule the case for *recording* of assessors' opinion. I decide to use the word '*record*' with the view of insisting that such opinion should appear in the proceedings. The procedure is, when an assessor is reading his/her opinion in the presence of the parties, the chairman should record such opinion. Therefore, it is not sufficient for the chairman to simply state that opinion of assessors recorded without writing them down in the proceedings. If such opinions do not feature in the proceedings, their acknowledgment in the judgment is acceptable. The Honourable Court of Appeal of Tanzania has insisted in different cases. Let me consider just a few of them: In the case of **Sikuzani Saidi Magambo and Kirioni Richard v.**

Mohamed Roble Civil Appeal No. 197 of 2018, CAT at Dodoma (unreported), Hon. Kerefu, J.A. observed that:

"It is also on record that, though, the opinion of the assessors were not solicited and reflected in the tribunal's proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the tribunal does not show that the assessors were accorded the opportunity to give the said opinion, it is not clear as to how and at what stage the said opinion found their way in the tribunal's judgment. It is also our further view that, the said opinion was not availed and read in the presence of the parties before the said judgment was composed".

Furthermore, a similar situation occurred in the case of **Ameir Mbarak and Azania Bank Corp. Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015 (unreported)** and the Court of Appeal of Tanzania had the following to say:

"Therefore, in our own 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."

Similarly, in the land mark case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported)**. The



Court of Appeal of Tanzania reiterated the above stance of the law. In that case Hon. Mugasha, JA further insisted that:

"...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."

The Court of Appeal further stated that:

*"...the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the tribunal, it embraces giving their opinions before the determination of the dispute. As such, **their opinion must be on record.**"* (emphasis added).


See also, the cases of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil appeal No. 286 of 2017, CAT at Mbeya (unreported); **General Manager Kiwengwa stand Hotel v. Abdallah Said Mussa**, Civil Appeal No. 13 of 2012; **Y. S. Chawalla and Co. Ltd v. DR. Abbas Teherali**, Civil Appeal No. 70 of 2017.

In the instant case, the proceeding does not show whether the assessors gave their opinion before the chairman composed the judgment. The chairman seemed to depart from the assessors' opinions which are nowhere to be found and he does not give reasons for his departure. These two irregularities vitiate the proceedings of the trial court. I hereby quash the proceedings and set aside



the decision of the trial tribunal. I further order the retrial of the case before another chairman and a new set of assessors. No order as to costs. It is so ordered.

DATED at **BUKOB**A this 29th day of October, 2021.


Ntemi N. Kilekamajenga.
JUDGE
29/10/2021

Court:

Judgment delivered this 29th October 2021 in the presence of the counsel for the appellant, Miss Gisera Rugemarila. The parties were all absent.


Ntemi N. Kilekamajenga.
JUDGE
29/10/2021

