

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

**LAND CASE APPEAL NO. 49 OF 2020**

*(Originating from Application No. 75 of 2012 of the District Land and Housing Tribunal of Bukoba)*

**VERDIANA SEVERIN.....APPELLANT**

***VERSUS***


**BETRICE KAWAMALA.....RESPONDENT**

**JUDGMENT**

*28<sup>th</sup> October & 5<sup>th</sup> November 2021*

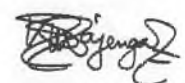
***Kilekamajenga, J.***

The appellant lodged the instant appeal challenging the decision of the District Land and Housing Tribunal of Bukoba. She moved this court with a memorandum of appeal containing six grounds of appeal which I take the discretion not to reproduce them in this judgment for the reasons that I will state here below. When the appeal was scheduled for hearing, the appellant was present and represented by the learned advocate, Mr. Danstan Mutagahywa whereas the respondent was also present and enjoyed the legal services of the learned advocate, Mr. Aaron Kabunga. Before the hearing commenced, I prompted the learned counsels on the blatant anomaly on the records of the trial tribunal that the assessors' opinion do not appear in the proceedings and the trial chairman did not give reasons for departing from the assessors' opinion in his judgment. After pointing out those two irregularities, I invited the learned counsels to address me on them.



The learned counsel for the appellant supported the two issues raised by the court. He argued that, before the judgment, the case was scheduled for assessors' opinions. Later, the order for assessors' opinion was vacated and the case was scheduled for judgment. Therefore, there are no assessors' opinions in the proceedings of the trial tribunal. Based on this illegality, he urged the court to nullify the proceedings and set the decision thereof for the case to be heard de novo. The counsel cited the case of **Sikudhani Said Magambo and another v. Mohamed Roble, Civil Appeal No. 197 of 2018**, CAT at Dodoma (unreported).

On the other hand, the counsel for the respondent supported the argument arguing that the illegalities pointed out are incurable. Under **section 23 and 24 of the Land Disputes Courts Act, Cap. 216 RE 2019**, the tribunal is well constituted when sits with assessors. **Regulation 19 (1)(2) of the Land Disputes (District Land and Housing Tribunal) Regulation of 2003** requires the tribunal chairman to consider assessors' opinions before composing the judgment. In this case, the proceedings do not show whether assessors gave their opinion. The counsel also urged the court to quash the proceedings of the trial tribunal and order the retrial of the case.



I am again obliged to reiterate the principles of law that have already been established on the essence of considering the assessors' opinions before the chairman of the District Land and Housing Tribunal composes a judgment. As argued by the counsel for the respondent, the tribunal is fully constituted when presided over by the chairman and not less than two assessors. **Section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 2019** have already stated that:

*"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 involvement of assessors in the determination of land cases is not the luxury; it is meant to ensure that decision making is participatory. The involvement of assessors is the only mechanism of ensuring that the community is involved in the resolution of the disputes that involve the community members. Such assessors are considered to represent the community and their opinions carry the needs of the community at large. Therefore, the chairman has an obligation to give reasons for departure from the assessors' opinions which are, in other words, community opinions. For clarity, I wish to revisit **section 24 of the Land Disputes Courts Act** which provides on the requirement of giving reasons for departing from the assessors' opinions. The section provides:

*"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".*

Involving assessors in decision making goes beyond their mere participation during the trial; they must also give opinions immediately after the closure of the defence case. Furthermore, the opinions must be read in the presence of the parties and be recorded in the proceedings. The chairman must also consider such opinion in the judgment. This position has been insisted by the Court of Appeal in several cases such as **Sikuzani Saidi Magambo and Kirioni**

**Richard v. Mohamed Roble Civil Appeal No. 197 of 2018, CAT at Dodoma (unreported)**, where the Court of Appeal stated 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".*

Also, 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."*

In the case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported)**, the Court of Appeal emphasised 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 case at hand, the trial tribunal scheduled the case for assessors' opinions on 22<sup>nd</sup> January 2020. On 28<sup>th</sup> February 2020 the case was scheduled for judgment while the assessors did not give their opinions. For the reasons stated above, the irregularity vitiated both the proceedings of the trial tribunal and decision thereof. I therefore quash the proceedings and set aside the decision of the trial tribunal and 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 BUKOBA** this 5<sup>th</sup> day of November, 2021.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**05/11/2021**

**Court:**

Judgment delivered this 05<sup>th</sup> November 2021 in the presence of the appellant  
and in absence of the respondent.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**05/11/2021**

