

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

**LAND REVISION NO. 03 OF 2021**

*(Originates from the District Land and Housing Tribunal for Mbeya, Land Appeal No. 23 of 2011 and application No. 24 of 2011, Originating from Tunduma Ward Tribunal Land Cause No. 3 of 2011)*

**TABU SENYE.....APPLICANT**

**VERSUS**

**ANYEGILE MWAMALUKWA.....RESPONDENT**

**RULING**

*Date of last Order: 26/06/2021*

*Date of Ruling: 28/ 10 / 2021*

**NDUNGURU, J**

Before me is a revision proceedings. The circumstances in which this court was prompted to take this course of action I find proper to set out the background of the matter briefly.

Following the written complaint by counsel for the applicant one Paul William dated 01<sup>st</sup> of April 2021 to the High Court of Mbeya in relation to Land Appeal No. 24 of 2011, application No. 24 of 2011 of the District Land and Housing Tribunal for Mbeya originated from Land Cause No. 03 of 2011 of Tunduma Ward Tribunal, this court opened this



land revision proceedings No. 03 of 2021 *suo motto* under section 43 (1) (a) (b) of the Land Disputes Courts Act, Cap 216 R:E 2019.

The matter first started in the Tunduma Ward Tribunal where the respondent Anyagile Mwamaluka filed a land case No. 3 of 2011 following the closure of his shop by the applicant Tabu Senye. The matter was determined in favour of the respondent. The tribunal ordered opening of the shop, evaluation of the loss and payment of compensation from the date the shop was closed.

Dissatisfied by the decision, the applicant appealed to the District Land and Housing Tribunal against the decision of the trial tribunal in land appeal No. 23 of 2011. The appellate tribunal dismissed the appeal, however it ordered for the applicant to pay Tshs. One Million per day as a loss of business for all days the business was closed.

On 15<sup>th</sup> November 2012, the District Land and Housing Tribunal issued an order, ordering the Tabu Senye to pay Tshs. 30,750,000/= within 14 days and such order emanated from application No. 24/2011 of which the applicant said it was null and void for reasons that, **one**; the ward tribunal entertained the matter while it has no jurisdiction in respect of the claim of one million per day as a loss of profit, **two**; the assessors were not involved to participate in the proceedings of the



District Land and Housing Tribunal as required by law, **three**; the award of Tshs. 1,000,000/=per day as a loss of business for all days the business closed was not awarded by the ward tribunal, therefore the appellate tribunal acted without jurisdiction, **four**; the proceedings of the ward tribunal were tainted with irregularities as to the manner the matter was referred, **five**; the proceedings of both ward tribunal and appellate tribunal are not certain hence null and void and **six**; the execution which Anyegile Mwamagala is attempting to execute to attach the residential house of Tabu Senye is null and void.

In this application, Mr Baraka mbwilo learned advocate appeared for the applicant while Mr Ndanu Emmanuel learned advocate who held brief for Mr Mbise appeared for the respondent. Mr Baraka Mbwiwo prayed for the application be disposed by way of written submission whereas Mr Ndanu Emmanuel conceded.

Arguing in support of the application, Mr Baraka Mbwiwo the learned counsel for the applicant submitted that the respondent and the late Tabu Senye were tenant and landlady whereby the late Tabu Senye owned residential namely Plot No. 12 Block I Tunduma Six 6 years before 2011 she rented one of the front rooms to the respondent who was selling tyres. In January 2011 the late Tabu Senye demanded rent

arrears from the respondent who stayed over 6 years without paying it. The daughter of the late Tabu Senye now the applicant together with the respondent's decided to close the dispute room/premise. Then the respondent went to Tunduma Ward Tribunal and filed land cause No. 3 of 2011.

It was submitted that the Ward Tribunal delivered a judgment where the following orders were made, **one**; the room was to be opened, **two**; to evaluate the loss and pay compensation for the damaged goods, and **three**; to pay loss of business profit of each day from the date the room was closed. Following that decision, the late Tabu Senye appealed to the District Land and Housing Tribunal for Mbeya. The appellate tribunal dismissed the appeal and then ordered the appellant to pay the respondent Tshs. 1,000,000/= per day as loss of business for all days the business remained closed. later on, 15<sup>th</sup> November 2012, the appellate tribunal issued an order compel the appellant to pay 30,750,000/=

Therefore, the applicant moved this court to exercise its revisional powers on the following's grounds.

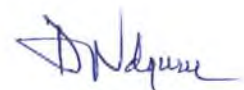


- 1. The appellate tribunal has no powers to order the appellant to pay to the respondent Tshs. 1,000,000/= per day as its powers ended when dismissed the appeal.*
- 2. The amount of 1,000,000/= were not proved and ordered by the Ward Tribunal. Neither were not discussed and proved by the appellate Tribunal.*

It is a trite law that courts in adversarial system are bound to adjudicate what is claimed by the parties and not otherwise. He supported his position by citing the case of **NBC Limited & Another VS Bruno Vitus Swalo**, Civil Appeal No. 331 of 2019 CAT at Mbeya.

Further, it was submitted that, when one reads the judgment of the District Land and Housing Tribunal dated 2/11/2011 may discover that the proceedings proceeded with one assessor namely Mrs A.C. Ongala. The judgment is silent why there was one assessor which is contrary to the dictates of the law.

The applicant further submitted that the opinion of assessors was not read in the present of the parties as mandated by **section 23(2)** of the Land Disputes Courts Act (supra) which states that 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 composes the judgment.



The law requires not only a mere involvement but a full participation of assessors in a trial by giving their opinions. The case of **Tubone Mwambeta VS Mbeya City Council**, Civil Appeal No. 287 of 2017 CAT, Mbeya (unreported) at page 12 the Court observed that:

*"As expressly stated under law, 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".*

Further, the applicant cited the case of **Edina Adam Kibona VS. Absolom Swebe (SHELI)**, Civil Appeal No. 286 of 2017 CAT, Mbeya (Unreported) at page 6 the court held that:

*"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 this judgment. However, in view of the fact 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."*



He submitted that the legal requirements as regard to assessor's opinion does not feature anywhere in the proceedings.

The remedy available is to quash the proceedings as per the cases of **Emmanuel Christopher Lukumai VS. Juma Omari Mrisho**, Civil Appeal No. 21/2013 CAT, DSM (Unreported), **Ameir Mbaraka & Another VS Edgar Kahwili**, Civil Appeal No. 154 of 2015, CAT, Iringa, (Unreported).

The applicant submitted that the judgment is null and void and all subsequent orders emanating from the said judgment are also null and void.

Finally, the applicant invited this court to nullify the whole proceedings.

In reply, Mr Mika Mbiye, counsel for the respondent did not respond to the allegations raised by the counsel for the applicant. He rather submitted on other matters which did not feature in the written submission of the applicant. It is therefore that the respondent either refused to respond to the allegations or had nothing to reply to the applicant's written submission.

However, he prayed for dismissal of this application with costs.



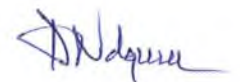


In rejoinder, the applicant submitted that the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent in his reply has never answered and/or responded to any of his issues that he raised in his written submission in chief supporting this revision filed in his court on 09/07/202. Instead, he ended up raising new accusations to this honourable court something which is un-procedural and without justifiable reasons.

Finally, he prayed for the decision of the DLHT of Mbeya, in Appeal No. 24 of 2011 be declared null and void basing on the above illegality pointed out.

In the first place, I must state that the applicant's letter of complaint has alleged apparent error in the proceedings of the land tribunals worth to be revised by this court

Upon my careful perusal of the documents and considered written submissions laid before me in this revision proceedings, it transpired that initially the respondent instituted land case No. 03 of 2011 at the Tunduma Ward Tribunal complaining the closure of his shop by the applicant herein. The decision was delivered in favour of the respondent on 11/02/2011. Consequently, the ward tribunal ordered that the opening of the shop, evaluation of the loss caused and to pay

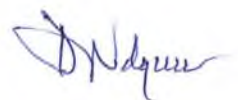




compensation for the goods damaged and to pay compensation for daily profit for all days the shop was closed.

Dissatisfied with the outcome, the applicant filed an appeal to the District Land and Housing Tribunal of Mbeya in Land Appeal No. 23 of 2011. The appeal was dismissed for lack of merit on 10/ 11/ 2011. Surprisingly, the tribunal went on ordering payment of Tshs. one million as a loss of business/profit per day which to my view is fatal. Why fatal? There was no basis in which the tribunal reached to order payment of such amount. Secondly, that amount was not mentioned in the decision of the Ward Tribunal. What Ward Tribunal ordered was the opening of the shop and evaluation be done for the purpose of compensation. Thus, if the District Land and Housing Tribunal dismissed the appeal, means the Judgement of Ward Tribunal and its orders were to be executed, including conducting evaluation. But was not done District Land and Housing Tribunal just come up with the amount

Further, on 15 /11/ 2012, the appellate tribunal in application No. 24 of 2011 issued an order, with an effect of ordering the applicant to pay the respondent a sum of Tshs. 30,750,000/= within 14 days. Nowhere the amount awarded was specifically proved, which is contrary to the law.




Furthermore, from the records of the tribunals, the applicant did not honour the payment of a sum Tshs. 30,750,000/= as ordered. Therefore, the respondent instituted execution process at the appellate tribunal where proclamation of sale of disputed house was issued against the applicant after attachment. It is undisputed from the record that a person by a name of Jeremia Mwakilema was pronounced as a higher bidder who purchased the disputed house for the sum of Tshs. 100,000,000/=.

From above observations, there are several anomalies noted by this court need to be revised.

Admittedly, the award of payment of a sum Tshs. 30,750,000/= as specific damage, being specific damage nowhere in the tribunal record such sum was strictly proved by the respondent which in law is fatal.

I further noted that, the order of payment of Tshs. 1,000,000/= per day as a loss of business by the appellate tribunal was also not specifically proved, and it can be said the same was pronounced on wishes of the chairman. The order was awarded after dismissal of the appeal, which is material irregularity. Such amount was not even awarded by the Ward Tribunal.



In the case of **Anthony Ngoo vs Kitinda Kimaro**, Civil Appeal No. 25 of 2014, Court of Appeal of Tanzania at Arusha, held that;

*"It is trite law, that special damages must be specifically pleaded and proved. In proving special damages, documentary evidence must be produced to prove the alleged loss"*

The Court further held that;

*"Once a claim for specific item is made, that claim must be strictly proved, else there would be no difference between a specific claim and a general one"*


Moreover, looking the copy of judgment in Land Appeal No. 24 of 2011, I find the irregularity that goes to the composition of the District Land and Housing Tribunal which determined the case subject to this revision. Pursuant to **section 23 (1) and (2)** of the LDCA, the District Land and Housing Tribunal is properly constituted by the chairperson and less than two assessors who are required to give opinion before the chairperson composes the judgement. It follows that any proceedings conducted in the absence of the said assessors is a nullity. See the case of **Sikuzani Said Magambo and Kirioni vs Mohamed Roble**, Civil Appeal No. 197 of 2018, CAT at Dodoma, unreported, where the Court of Appeal held as follows: -



*"On the strength of our previous decisions cited above, we are satisfied that the pointed omissions and irregularities amounted to a fundamental procedural error that have occasioned a miscarriage of justice to the parties and had vitiated the proceedings and entire trial before the tribunal, as well as those of the first appellate court."*

Although the irregularity in the above cited case was in respect of failure to read the opinion of assessors in the presence of the parties, I am of the strong opinion that the principle thereto applies where the District Land and Housing Tribunal is not properly constituted for want of at least two assessors. I am satisfied that the proceedings and the judgement of the appellate tribunal were vitiated for being tainted with serious irregularity.

It is on record that the judgement of the appellate tribunal shows only a single assessor was involved from beginning to the finality of the proceedings. There was no reason advanced by the appellate Chairperson to proceed in the absence of the second assessor which is contradicting the requirement of **section 23 (1)** of the District Land and Housing Tribunal, Cap 216 RE 2019.



I find that the appellate tribunal was not properly constituted pursuant to the above provision as rightly submitted by the counsel for the applicant.

The above noted irregularities the applicant is trying to raise to this court which to my view are justifiable for revision.

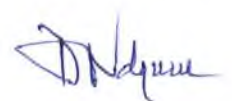
Adding to the above, when I made reference to the Misc. Land Application No. 38 of 2021, originating from this revision proceedings I fault also the process of execution as conducted by the appellate tribunal in executing the decree in land appeal No. 24 of 2011, particularly the selling of the house in dispute through auction.

I say so because, the selling of the house in dispute was surrounded with fraudulently arrangement as stated by the 2<sup>nd</sup> respondent in his submission. It was the submission of the 2<sup>nd</sup> respondent one Yerima John Sanga in Misc. Land Application No. 38 of 2021 that after he was induced by Costa Kyando, and he then misrepresented himself as Jeremia Mwakilema and posed as a purchaser. He purchased the dispute house in the auction conducted by the court broker. Costa Kyando was a close friend of respondent herein.

Yerima John Sanga posed as a buyer. He purchased the disputed house property of the applicant one Tabu Senye using the name of

Jeremia Mwakilema for the advantage of the respondent herein. In his submission he admitted that his names are Yeremia John Sanga and not Jeremia Mwakilima as appear in the documents relating the disputed house. He further admitted that he signed the documents relating the house in dispute without realizing that he was involved in fraudulent arrangement colluded between respondent, Anyegile Mwamaluka and the court broker. It is his firm submission that he never bought the disputed house as he had no such money to purchase the house. Even after he signed the documents relating to the disputed house, he was not given such documents in respect of the suit plot, that is certificate of sale and registered Right of Occupancy as the same was taken by the respondent herein. Not only the submission, the said Yeremia wrote to the Deputy Registrar, the letter dated 22/06/2021 on the same.


In view thereof, there was no legal transfer of the Right of Occupancy relating to the disputed house Plot No. 12 Block I to the 2<sup>nd</sup> respondent one Yeremia John Sanga who purported to be Jeremia Mwakilema as the same was tainted with fraudulent arrangement between respondent herein and court broker. It is apparent that the auction conducted was therefore void. A person by the name of Jeremia Mwakilema was not there, hence the bonafide purchaser was lacking.



Therefore, in my considered view no good title or right over the plot land was ever transferred from Tabu Senye to Jeremia Mwakilema, per the case of **Zakaria Barie Bura vs Theresia Maria John Mubiru** [1995] TLR 211 as the auction was surrounded with fraud. Hence, purported transfer done thereof was ineffective and enforceable. Similarly, to say, the ownership of the disputed house had all along, during the trial of the land case and after it, in law remained with Tabu Senye.

From what I have already endeavoured to show in this ruling, it is now clear that the applicant was prejudiced with the above noted irregularities which has occasioned a miscarriage of justice. As to what are the consequences of a court or tribunal proceedings being tainted with serious irregularities. As per the authority of **Mohamed Issa vs John Machela**, Civil Appeal No. 55 of 2013 is to declare such proceedings a nullity. In the circumstances of the above irregularities, I find the same vitiated the entire proceedings of the appellate tribunal and all its orders, thus are nullity.

In view thereof, I am constrained to exercise revisional powers conferred upon this court by virtue of section 43 (1) (a) (b) of the Land Disputes Courts Act, Cap 216 RE 2019 and nullify, quash and set aside





the proceedings, judgement issued by the District Land and Housing Tribunal for Mbeya for being nullity. In such situation, a party with any claim is at liberty to start afresh. I accordingly allow the revision. I do hereby make the following orders.

1. I hereby quash the District Land and Housing Tribunal proceedings and decision.
2. The awards and orders arising from the nullified proceedings are hereby quashed and set aside.
3. The sale in respect of the house Plot No 12 Block 12 I Tunduma is void.
4. The execution proceedings in respect of the sale of the house Plot No. 12 Block I at Tunduma void.
5. The certificate of sale which was prepared in respect of the House Plot No. 12 Block 12 be cancelled and set aside.
6. The registration of the house Plot No. 12 Block I be restored in the name of Tabu Senye.
7. Costs to follow event

It is so ordered.



  
**D. B. NDUNGURU**

**JUDGE**

**28 / 10/ 2021**

**Date: 09/11/2021**

**Coram:** P. D. Ntumo – PRM, Ag. DR

**Applicant:** Present

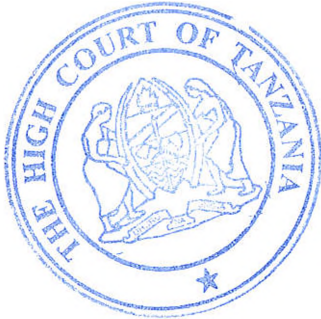
**For the Applicant:** Mr. Boniface Mondu – Advocate

**Respondent:** Present

**For the Respondent:** Mr. Boniface Mondu holding brief for Mr. Mika Mbise

**B/C:** Mapunda

**Court:** Ruling delivered this 9<sup>th</sup> day of November, 2021 in chambers in the presence of the parties and Mr. Boniface Mondu, Advocate for the applicant and holding brief for Mr. Mika Mbise, Advocate for the respondent.



*P. D. Ntumo*  
**P. D. NTUMO – PRM**  
**Ag. DEPUTY REGISTRAR**  
**09/11/2021**