

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

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. LAND APPEAL NO. 49 OF 2021**

*(Arising from the Land Appeal No. 38 of 2017 of Karagwe DLHT, originating from Civil Land Case No. 36 of 2016 of Kituntu Ward Tribunal)*

**JONESIA JONATHAN..... APPELLANT**

**VERSUS**

**ESTA JONATHAN..... RESPONDENT**

**JUDGMENT**

30/ 11 /2021 & 24 /12/2021

**NGIGWANA, J.**

The appellant, Jonesia Jonathan had moved the District Land and Housing Tribunal (DLHT) for Karagwe at Karagwe seeking for extension of time to file an appeal out of time against the decision of Kituntu Ward Tribunal in Civil Case No. 36 of 2016 handed down on 16/11/2016. The application was registered as Misc. Application No. 38 of 2017.

After hearing the parties, the application was dismissed on 7/03/2019 want of merit.

The factual brief of the matter is that, the respondent, Esta Jonathan sued the appellant for trespassing over her piece of land which she alleged to have bequeathed from her deceased father namely; Jonathan Kakembo. The disputed land located at Kituntu Ward within Karagwe District in Kagera Region.

At the end of the trial, the trial tribunal was satisfied that the appellant did trespass into the land of the respondent, hence the appellant was ordered to vacate the suit premises.

The appellant was aggrieved by the decision of the ward tribunal, but no appeal was lodged by her to the DLHT within 45 days required by the law.

Since, there was no such appeal, the appellant lodged an application for extension of time, but the same was dismissed for want of merit.

Aggrieved by the decision of the DLHT, the appellant has come to this court armed with seven (7) grounds of appeal as follows;

1. That, the Chairman of the District Tribunal grossly erred in law and facts for failure to know that the time for appealing was to be completed on 31/12/2016 while the appellant felt sick on 26/12/2016 up to 9/01/2017 which was out of time to appeal in the tribunal.
2. That, the Chairman of the District Tribunal grossly erred in law and facts to deny the rights of the appellant to be heard in the tribunal hence the violation of natural justice.
3. That, the Chairman of the District Tribunal erred in law and facts to entertain this matter which was time barred as per Rule 2 and 3 of the customary law (Limitation of proceedings) Rules of 1963 as applied by the Law of Limitation Act under item 22 part 1 of the Schedule to the Law of Limitation Act (Cap. 89 R: E 2002).

4. That, the Chairman of the District Tribunal grossly erred in law and fact for failure to know that the appellant bequeathed the disputed Shamba from her late father in 1990 before his death occurred and up to now is more than 27 years without any interference from the neighbors and clan members.
5. That, the Chairman of the District tribunal erred in law and facts for failure to know that the respondent had no **locus standi to institute** the case against the appellant without being appointed as an administrator of the deceased estate called JONATHAN KAKEMBO.
6. That, the Chairman of the District tribunal grossly erred in law and in facts to receive fabricated evidence from the Respondent who had **no locus standi** to claim the appellant's portion of the shamba without any legal justification in the eyes of law.
7. That, the Chairman of the District Tribunal erred in law and in facts by not considering strong evidences produced by the Appellant beyond balance of probability than weak evidence produced by the Respondent.

Upon careful perusal of the DLHT records, I discovered that the Hon. Chairman sat with the aid of two assessors namely; **Ms. Ruth and Mr. Nzorombi** but before judgment/ruling, they were not afforded an opportunity to give their opinion.

In order to enhance the right to be heard which is a fundamental right in the administration of justice, I was prompted to invite the parties to address the court because the issue of assessors was not among the grounds of appeal raised by the appellant.

The appellant who appeared in person and unrepresented confirmed that the Hon. Chairman sat with the aid of two assessors but assessors gave no opinion, and for that matter, no opinion read to them before the ruling is composed. The respondent who also appeared in person and unrepresented conceded to what has been stated by the Appellant.

The records of the DLHT suggest that the Chairman was aware of the role of assessors. The DLHT records of 20/09/2018 read;

**"Order:** *Judgment on 31/10/2018. Assessors to opine, parties to attend.*

*Sgd: R.E. Assey*

*Chairman*

*20/09/2018"*

The DLHT Records of 22/11/2018 read;

**"Order:** *Judgment on 09/01/2019. Parties to attend, opinion be recorded.*

*Sgd: R.E. Assey*

*Chairman*

*22/11/2019"*

The records of 09/01/2019 read;

**"Order: Judgment on 23/01//2019. The opinion be recorded.**

*Sgd: R.E. Assey*

*Chairman*

*09/01/2019"*

Despite the herein above orders, no opinion given and read to the parties before the ruling which was delivered on **07/03/2019 is composed.**

Section 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 R: E 2019 provides;

*"1. The District Land and Housing Tribunal established under section 22 **shall be composed of at least and chairman and not less than two assessors.***

*2. The District Land and Housing Tribunal **shall be duly constituted when held by chairman and two assessors who shall be required to give out opinion before the chairman reaches the judgment.***

Regulation 19(2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations; 2003 imposes a duty upon the Chair person to require every assessor present at the conclusion of the hearing, to give his/her opinion in writing.

In the present case, there was non-compliance of the here in above provisions of the law. Involvement of assessors in the trial must be reflected in the tribunal proceedings and the judgment/ decision. It cannot

be assumed that assessors did give opinion. See **Tubone Mwambeta versus Mbeya City**, Civil Appeal No. 287 of 2017 CAT (unreported).

The consequences of what transpired in the DLHT is very serious because it renders the trial a nullity. See **Samson Njarai and Another versus Jacobo Mesoviro**, Civil appeal No. 98 of 2015 CAT (unreported).

In the event, I invoke the revisional powers vested in this Court by section 43(1)(b) and (2) of the Land Disputes Courts Act, Cap 216 R: E 2019 to nullify the entire proceedings and ruling of the DLHT for Karagwe at Karagwe in Misc. Land Application No. 38 of 2017. Subsequent orders thereto are set aside. For the interest of justice, the matter is remitted back to the DLHT to start afresh before another Chairman and a new set of assessors. Since the anomaly was not caused by the parties nor raised by any of them, each party shall bear its own costs.

It is so ordered.



  
E.L. NGIGWANA

JUDGE

24/12/2021

Judgment delivered this 24<sup>th</sup> day of December, 2021 in the absence of both parties. Each party to be supplied with the copy of the judgment.



  
E.L. NGIGWANA

JUDGE

24/12/2021