

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

**(BUKOBA DISTRICT REGISTRY)**

**AT BUKOBA**

**MISCELLANEOUS LANDAPPEAL NO. 26 OF 2020**

*(Originating from Appeal No. 28 of 2017 at the District Land and Housing Tribunal for Muleba at Muleba and Civil Case No. 26 of 2020 at Mubunda Primary Court)*

**RUGENIA YAKOBO-----APPELLANT**

**VERSUS**

**PENSIOZA RWAKASHAKA-----RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 12/10/2021**

**Date of Judgment: 10/11/2021**

**Hon. A. E. Mwipopo, J.**

Rugenia Yakobo, the Appellant herein, has filed the present appeal against the decision of the District Land and Housing Tribunal for Muleba at Muleba in Appeal No. 08 of 2020. The judgment of the District Land and Housing Tribunal in the said appeal was delivered on 26<sup>th</sup> October, 2017 in favour of the Respondent. The Appellant was aggrieved by the decision of the trial Tribunal and filed the present appeal. The Appellant filed a Petition of appeal which contains three (3)

grounds of appeal. The said grounds of appeal are provided hereunder as follows:-

- 1. That, the learned Chairman erred in law by failure of considering the crucial raised ground of the locus stand to file the suit at the Trial Tribunal grounding on reasons of the Respondent being the sole inheritor.*
- 2. That, like the Trial Tribunal, the first Appellate Tribunal also failed to consider the defence evidence testified to the effects of the sale transaction of the suit land by the Appellant from one Christina Chibanobela who was proved to have purchased the same to one Laurent Konkolido.*
- 3. That, the judgment of the District Land and Housing Tribunal is fatally defective for lacking the recorded Assessor's opinions of which the learned Chairman claimed to concur with.*

On the hearing date, the Appellant was represented by Ms. Herieth Barnabas, Advocate, whereas the Respondent appeared in person. The hearing of the appeal proceeded orally.

The learned Counsel for the Appellant submitted on all three grounds of appeal against the decision of the Muleba District Land and Housing Tribunal. In the first ground of appeal, she submit that the Tribunal erred by failure to consider the crucial ground of locus stand to file suit at the trial tribunal

grounding on reasons of the Responding being sole inheritor. She made reference to the case of **Regina Shubi Balanzi Sr. V. Registered Trustees of Chama cha Mapinduzi [1993] TLR 203** where the court held that Locus Stand is governed by common Law upon which a person who bring the matter to court his right or interest has been breached or interfered with. She said that Locus Stand is defined as the right to bring an action against certain decision. The 1<sup>st</sup> page of the proceeding of the Trial Tribunal showed that the land in issue belongs to Appellant's mother and for her to have locus standi she has to prove that she was granted the land by Administrator of deceased of estate or she was the Administrator of the deceased estate.

The learned Counsel cited another the case of **Tatu Adui V. Mlawasalum and Another**, Misc. Civil Appeal No. 8 of 1990, High Court, at Dar Es Salaam, (Unreported), which was cited with approval in the case of **Abel Kajiki and 2 Others V. Innocent Saus**, Land Appeal No. 27 of 2016, High Court, at Bukoba, (unreported), where it was held that only administrators of the estate who is also a person legal representative of the deceased can sue or be sued over estate. From above position, the Counsel was of the opinion that the case filed at the trial Tribunal was wrongly claiming for her mother's land while she was not administration of the deceased estate.

On the second ground of appeal, the counsel for the Appellant stated that the Trial Tribunal and Appellate Tribunal failed to consider the defence evidence

that the suit land was bought by the Respondent's sister from Christina Chibanobela who also he purchased from Laurent Kankolido. He stated that, Rugenia Yakobo stated in her testimony that the deceased sold the land to the Appellant and the remaining part she awarded her as her inheritance. This evidence is supported by Laurent Kankolidi who testified that he sold the land to Christina Chibanobela. That land was later on sold by Christina Chibanobela to the Appellant and the remaining land was granted as gift.

On the last ground of the appeal, the counsel said that there is no Assessors' opinion stated in the judgment of the Appellate Tribunal which the Chairman claimed to concur with. That the Chairman after hearing parties' submission did not give opportunity to the Assessor's to provide their opinion. Also, the opinion has to be stated in Judgment but the same was not recorded or stated in the Judgment, though in the said judgment the Tribunal generally stated that the Assessors' opinion is that the appeal be rejected. The Counsel made reference to the case of **Agnes Matodo V. Richard Mhanda [1995] TLR 137** where it was held that:-

*"Since Assessors are part to the Tribunal, the chairman has to record their opinion and if they agree the Chairman has to prepare the judgment which is signed by all of them. If they do not agree, they need not to sign. The Tribunal was supposed to record assessor's opinion, failure to do this is fatal."*

For that reason she prayed for the Court to quash the proceedings of the District land and housing Tribunal and those of the Trial Tribunal and order each party to remain in his position.

Replying to the Appellant submission, the Respondent stated that the land in dispute was in the possession of her sister Christina who got it from their mother. As her sister had no children she went to live with her mother at the farm and house. After her mother and her sister died, the Appellant went in to live in the house. Even their graves are in the land in dispute. The Appellant claimed to buy the house which Respondent's mother and her sister lived. She went to the village leadership and asked the Appellant to show the sale agreement containing her mother's signature but Appellant had none. The Appellant entered into all property which was left by Respondent's mother and sister including house and the farm. The Appellant took all property which was owned by Respondent's mother and sister.

It is true that Appellants sister and mother bought the land from Konkolido. That land they bought it together.

The Respondent said on the issue of assessor failure provided their opinion that she don't know that. What she know is that the tribunal provided its decision.

In her rejoinder, Ms. Herieth Barnabas, Advocate, stated it is not true that the Appellant entered into the land in dispute after Christina passed away. This is not true as it was the Appellant who was taking care of Christina Chibanobela until her death. And it was during this time that the late Christina Chibanobela sold some part of the land to the Appellant and gave the remaining land to her.

After hearing submissions from the parties, I observed that the third issue on the failure of the District land and Housing Tribunal to record the opinion of the Assessors' is crucial as it touches the jurisdiction of the District land and Housing Tribunal to determine the Appeal. The issue if proved may dispose of the appeal. For that reason the Court is going to determine this issue first.

The relevant law providing for the composition of the District Land and Housing Tribunal is section 23(2) of the Land Disputes Courts Act, Cap. 216 R.E. 2019. The section provides that the District Land and Housing Tribunal is duly constituted when held by a chairman sitting with two assessors who shall be required to give out their opinion before the Chairman reaches the judgment. The involvement of Assessor's opinion is crucial and the same must be availed in the presence of parties so as enable them to know the nature of the opinion and whether the same has been considered in the judgment. (See. **Tubone Mwambeta V. Mbeya City Council**, Civil Appeal No. 287 of 2017, Court of Appeal of Tanzania, at Mbeya).

The Counsel for the Appellant argued that there is no Assessors' opinion stated in the judgment of the Appellate Tribunal which the Chairman claimed to concur with. The Chairman after hearing parties' submission did not give opportunity to the Assessor's to provide their opinion as the same was not recorded or stated its content in the Judgment. The Respondent being a layperson she has nothing to say on the issue.

I thoroughly perused the District Land and Housing Tribunal record of proceedings and I observe that after the Tribunal has heard both parties on 29<sup>th</sup> September, 2017, it proceeded to pronounce the date of judgment. The record does not show at all if the Assessors' were given an opportunity to provide their opinion. Also, as it was rightly observed by the learned Counsel for the Appellant, the judgment of the Appellate Tribunal shows in page 2 that Assessors' who sit with the Chairman were of unanimous opinion that the appeal be rejected. The same is found in the judgment of the tribunal without knowing how the same found its way in the judgment. In such circumstances, it is not safe to assume that the Assessors provided their opinion. The Court of Appeal met a similar situation in the case of **Ameir Mbarak and Another V. Edgar Kahwili**, Civil Appeal No. 154 of 2015, (Unreported), where it held that, I quote:-

*"Therefore, in our considered view, it is unsafe to assume the opinion of the Assessor which is not on the record by merely reading the acknowledgment of the Chairman in the judgment. In circumstances, we*

*are of considerable view that, assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was serious irregularity."*

The Consequences of this serious irregularity of unclear involvement of Assessors in the trial is to render such trial a nullity. This is the position held in the case of **Samson Njarai and Another V. Jacob Mesoviro**, Civil Appeal No. 98 of 2015, Court of Appeal of Tanzania, (Unreported); and in **Awiniel Mtui and 3 Others V. Stanley Ephata Kimambo and Another**, Civil Appeal No. 97 of 2015, Court of Appeal of Tanzania, (Unreported).

For that reason, I find that the Tribunal was not properly composed which is contrary to section 23 (3) of the Land Disputes Courts Act as a result the whole proceedings of the trial Tribunal was a nullity. I hereby quash the proceedings and the judgment of the trial Tribunal and the orders made thereof are set aside. The matter is remitted back to the District Land and Housing Tribunal to start afresh before another chairman and a new set of assessors.

As the issue of failure to record Assessors opinion in the trial Tribunal proceedings dispose of the case, I'm not going to determine the remaining issues. Since the matter is remitted back to the District Land and Housing Tribunal to start afresh, then each party has to take care of his own cost.



**A.E. MWIPOPO**

**JUDGE**

**10/11/2021**

Date: 10/11/2021

Coram: Hon. J.M. Minde, DR

Appellant: Present

~~Respondent: Absent~~

B/C: Lilian Paul

**Advocate Herieth for the Appellant:** This matter comes for Judgment. We are ready.

**Court:** Judgment delivered this 11<sup>th</sup> November, 2021 in the presence of the Appellant and his Advocate and in the absence of Respondent.



  
Sgd: J.M. Minde, DR

**10/11/2021**