

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL NO. 16 OF 2021

(Arising from High Court of Tanzania at Bukoba in Land Appeal Case No. 10 of 2019 and Misc. Land Case Application No. 67 of 2019 and original Misc. Application No. 208 of 2012 of the District Land and Housing Tribunal for Kagera at Bukoba)

ACURES ERNEST..... APPELLANT

VERSUS

ZEPHLINE FURGENCE..... RESPONDENT

JUGDMENT

Date of Judgment: 15.10.2021

Mwenda, J.

The appellant (Mr. Acures) has filed this appeal challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Land Application No. 208 of 2012. In that matter the appellant who stood as respondent was condemned to redeem the land to the applicant (now the respondent) or the purchased price to be returned back to the applicant.

Being dissatisfied by such a decision he appeal to this court with a total of three (3) ground of appeal which are and I quote;

- (1) That the trial Tribunal erred in law and facts after having observed that the sale agreement was doubtful and invalid to determine the suit premise in favor of the respondent.
- (2) That, the trial tribunal erred in law and fact for failure to consider the evidence adduced by the appellant thus reaching into unjust decision on part of the appellant
- (3) That the trial tribunal erred in law and facts to determine the case against the weight of evidence.

When this appeal was scheduled for hearing the appellant appeared in person while the respondent refused to sign summons (as stated by the Village Executive Officer on the summons issued by this court on 23rd March 2021) hence this appeal proceeded in his absence.

During his submission, the appellant submitted that he has nothing to add and he prayed for this court to consider the records and the grounds of appeal in making decision.

This court went through the trial tribunal's proceedings and grounds of appeal and found out that the lower tribunal's proceedings are tainted with irregularity as there is no opinion of assessors. It is clearly shown that the records are silent as to whether the opinion of assessors were read to the parties as required by the

law. This irregularity is shown at page 13 of the tribunal proceedings where the learned chairman recorded that and I quote;

"Order: Judgment on 05.03.2015, the parties to attend opinion of one assessor be completed.

Tribunal: The matter is schedule for judgment on 05.03.2015 but upon visiting the records and opinion of my two assessors I have noted that the letter of sale Annexure A1, has defect that is amount in words defers with the amount in figure so the tribunal refrain from delivering the judgment and refers the sale agreement to the forensic Bureau for their opinion."

From that record it is clearly shown that the records are silent as to whether the opinion of assessors were read to the parties as required by the law or not.

It is trite law that under **section 23(2) of the Land Disputes Court Act and Regulation 19(2) of the Land Dispute Courts (The District Land and Housing Tribunal) Regulation of 2003** 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 reaches the judgment.

By looking at the requirement of law and the tribunal records, it is clear that the learned chairman acknowledges the presence of assessors but the records are silent as to whether the said assessors gave out their opinion before the parties.

This court in the case of **Rev. Peter Benjamini vs Tumani Mtazamba Land Appeal No. 69 of 2019** at page 11 the court stated that:

"For the purpose of giving guidance to the District Land and Housing Tribunal, I wish to reiterate that, after the closure of the defense case, the chairman must schedule the case for assessors' opinion. On the date fixed for assessors' opinion the proceedings for instance should read as follows;

Date: 10th August 2021

Coram: S.J Mashaka

T/c: Magoma

Members: T.J Kashisha and J.N Ndoma

Applicant : present in person

Respondent: present in person

Tribunal: the case is coming for assessors opinion

Applicant: I am ready for opinion

Respondent: I am ready too

Assessors opinions

1st assessor T.J Kasisha

Maoni yangu ni.....

2nd assessor J.N.Ndoma

Maoni yangu ni.....”

In emphasizing the importance of assessor’s opinion the Court of Appeal in the case of **Edina Adam Kibona V. Absalom Swebe (SHELI) Civil Appeal No. 286/2017** while making reference to are **Amir Mbaraka and Azania Bank Corporation Ltd V. Edgar Kahwi** held inter alia that:

“ Therefore, in our considered view it is un safe to assume the opinion of assessor which is not on the record by merely reading the acknowledgement of the chairman, we are of the considered view that assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularly”

Therefore, this court finds the District Land and Housing Tribunal's proceedings tainted with irregularity for lack of assessor's opinion. This appeal succeeds by quashing the proceedings of the District Land and Housing Tribunal and set aside the judgment and any other order emanating from Application No.208 of 2012. The District Land and Housing Tribunal ought to have followed the guidelines of recording assessors opinion as stated in the case of **Rev. Peter Benjamini vs Tumani Mtazamba (supra)** and with that regard, any interested party shall institute a fresh suit before proper forum.

Since the anomalies and irregularities giving rise to these outcomes was caused by the trial tribunal's error, this court order each party to bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

15.10.2021

Judgment delivered in the open court in the presence of Mr. Acores Ernest the Appellant and in the absence of the respondent.




A.Y. Mwenda

Judge

15.10.2021

