

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND APPEAL NO. 57 OF 2020

(From the District Land and Housing Tribunal for Rungwe at Tukuyu in Land
Application No. 37 of 2018)

CASTO MWAMBEMBELA.....APPELLANT

VERSUS

RAHERI MWAKYUSA.....1ST RESPONDENT

GEOFREY MWAKYUSA.....2ND RESPONDENT

RULING

Date of Hearing: 11/03/2022

Date of Ruling : 31/03/2022

MONGELLA, J.

The appellant's appeal was filed following dissatisfaction with the District Land and Housing Tribunal for Rungwe at Tukuyu (the Tribunal) in Land Application No. 37 of 2018. The Memorandum of Appeal contained 5 grounds. However, the appellant's counsel, Mr. Patience Maumba, on the date set for hearing of the appeal, raised a legal issue regarding the participation of assessors in the Tribunal. He contended that the Proceedings do not reflect the opinion of assessors aired to the parties. The Court as well raised another issue regarding the opinion of assessors being reflected in the Tribunal judgment. The Court therefore ordered the



counsels for both parties to address it on the two issues before proceeding to hearing of the appeal.

The parties' counsels addressed the Court orally on 11th March 2022. Mr. Maumba started to address the Court. He argued that the law deems the Tribunal duly constituted when it is composed by the Chairman and two assessors. The law also requires the assessors to render their opinion in writing and to air their opinion before the parties after closure of evidence by the parties and before judgment is pronounced. To that effect he cited **Regulation 19 (2) of G.N. No. 174 of 2003**. Referring to the Tribunal judgment, he argued that it is not stated in the said judgment as to what was opined by any of the assessors.

He added that even in the Tribunal proceedings, nothing was recorded regarding the opinion of assessors aired before the parties. He said it is therefore not known as to what transpired regarding opinion of assessors. On those bases he challenged the Tribunal judgment for being rendered without the opinion of assessors. Further, Mr. Maumba was of the view that the Tribunal was supposed to as well give reasons in its judgment as to why he concurs with the opinion of assessors, but did not. He was of the view that the irregularities diminish the weight of the Tribunal judgment. He referred the Court to its previous decision in **Niga Mwakajumba vs. Justine Sanga**, Land Appeal No. 15 of 2018 (HC at Mbeya, unreported); and of the Court of Appeal in **Edina Adam Kibona vs. Absalom Swebe**, Civil Appeal No. 286 of 2017 (CAT at Iringa, unreported). He prayed for the case file to be remitted back to the Tribunal for the opinion of assessors to



be aired to the parties and properly recorded and considered in the Tribunal judgment.

Mr. Ignas Ngumbi represented the respondents. He disputed the point raised by the appellant. He argued that the proceeding as recorded on 28th August 2020 clearly shows that the Tribunal was properly constituted and the opinion was read to the parties who were all present. He added that the record contains the written opinion of assessors as well. He was therefore of the stance that the requirement under **section 23 of Cap 216** and **regulation 19 (2) of G.N. No. 174 of 2003** was adhered to. He called for the Court to disregard the point raised by the appellant's counsel.

Mr. Ngumbi further challenged Mr. Maumba's contention that the Tribunal ought to have stated the reasons why he concurred with the assessors' opinion. He argued that the law only requires reasons to be given where the Chairman differs with the opinion of assessors.

With regard to the point raised by the Court, Mr. Ngumbi conceded that though the Hon. Chairman stated in his judgment that he concurs with the assessors' opinion, it is not stated in the judgment as to which opinion he concurred with. He found the judgment being defective for not containing the substance of the assessors' opinion. However, on the other hand he argued on the way forward distinguishing the case of **Edina Kibona** (supra) cited by Mr. Maumba. He argued that in **Edina Kibona** (supra) the assessors never availed their opinion at all while in the matter at hand the opinion was availed but the content thereof not reflected in the judgment. In the circumstances, he was of the view that the Court should

remit the case file to the Tribunal for it to compose a proper judgment reflecting the opinion of assessors. He called for the Court to borrow a leaf from the Court of Appeal case in ***Livingstone Bartholomeo Urrassa vs. The Republic***, Criminal Appeal No. 334 of 2017 (unreported).

After considering the arguments by the learned counsels I shall start deliberating on the issue raised by Mr. Maumba, the appellant's counsel on reflection of the assessors' opinion in the Tribunal proceedings. In his arguments, he submitted that the Tribunal Chairman ought to have summarised the assessors' opinion in the proceeding when being aired out. With all due respect, I do not agree that the Chairman ought to record the opinion of assessors. In my considered view, it suffices to record in the proceeding that the opinion of assessors has been read out to the parties, as the opinion of assessors are required to be filed in writing in the Tribunal. The proceeding of 28th August 2020 shows that the opinion was availed to the parties and the written opinion of the assessors is in the Tribunal record.

Mr. Maumba further argued that the Hon. Tribunal Chairman ought to have given reasons as to why he agreed with the opinion of assessors. I as well do not subscribe to his argument, but that of Mr. Ngumbi to the effect that the reasons ought to be given when the Chairman differs with the opinion of assessors. This is what is provided under **section 24 of the Land Disputes Courts Act, Cap 216 R.E. 2019**, which states:

"In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound



by it, **except that the Chairman shall in the judgment give reasons for differing with such opinion.**" [Emphasis added]

In line with the above observation, I now move to the issue raised by the Court. It is clear on the Tribunal judgment, as conceded by both counsels, that the Hon. Chairman stated to have agreed with the opinion of assessors, however, he did not include the content of the opinion he claimed to have agreed upon. As much as he is not bound by the opinion of assessors, as provided under section 24 of Cap. 216, and is not obliged to give reasons for differing with the opinion given, in my considered view, I find that it is imperative for the judgment to reflect the content of the opinion. This communicates as to what was exactly opined and the Chairman is agreeing upon.

Given the above observation, I remit the case file to the Tribunal for a proper judgment to be composed by reflecting the opinion of assessors. Given the outcome of the case, I make no orders as to cost.

Dated at Mbeya on this 31st day of March 2022.



L. M. MONGELLA

JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 31st day of March 2022 in the presence of the parties and their counsels.



L. M. MONGELLA

JUDGE