

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND APPEAL NO. 68 OF 2020**

*(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Application No. 78 of 2016)*

**1. WINCHSLAUS ABEL**  
**2. RESPIKIUS ABEL**  
**3. SOSPIETER PASTORY** } .....**APPELLANTS**

**VERSUS**

**CYRIACUS RAIMOND..... RESPONDENT**

**JUDGMENT**

*Date of Judgment: 29.03.2022*

*Mwenda, J.*

Mr. Winchslaus Abel, Respikius Abel and Sospiter Pastory (The Appellants) being dissatisfied with the judgment of the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 78 of 2016, preferred this appeal with a total of five (5) grounds.

When this appeal was scheduled for hearing the respondent enjoyed the legal service of Mr. Victor Blasio the learned counsel while the appellants appeared in person without legal representation.

During submission in chief, the 1<sup>st</sup> appellant submitted that, before the trial tribunal Hon. Chairman did not consider preliminary objection raised by them which demanded the suit to go back and start before the Ward Tribunal. He submitted that he bought the Land in dispute in 1979 from the respondent's grandfather and later in the year 1980 he bought another piece of land from respondent's father. He said these purchases were executed before the respondent was born.

He further submitted that the respondent had no Locus standi to sue and the trial tribunal erred for failure to order visit of Locus in quo. He concluded by submitting that, the respondent wrongly sued them jointly because the lands in dispute are located in different areas and not bordering each other. He concluded by praying this court to allow this appeal.

The 2<sup>nd</sup> appellant's submission in support of the appeal is that, the Hon. Chairman rejected his letter which prove his ownership that he bought the piece of land from one Paulina James. He submitted that despite refusal of his exhibit, the respondent himself had no any proof of ownership of the land in dispute.

He further submitted that he bought that land in dispute from Pauline James who is not among the respondent's clan members. He stated that the respondent sued them by only guessing as he did not know exactly which land belonged to who.

The 3<sup>rd</sup> Appellant's submitted that, he had nothing to add and he prayed for this honorable court to consider the grounds of appeal while making its decision.

In reply to the submissions by the Appellants the learned counsel for the respondent submitted that the respondent had Locus standi to sue, as he was appointed as the administrator of the estate of his late father one Raymond Eugene. He said that, at page 3 of the judgment, the first issue which was determined by the court was whether the respondent had Locus standi and that there was a proof to that effect as the respondent tendered before the tribunal form No. IV appointing him as administrator as well as the proceedings of Kashasha Primary Court. He added that the appellant did not protest the said evidence before the tribunal. In regard to the submission by the first appellant that the respondent was not residing in the village and that he had not visited the village quite often, to him this does not challenge the Locus standi of the respondent.

In regard to the second ground of appeal that the Hon. Chairman failed to entertain their preliminary objection the learned counsel for the respondent submitted that, at page 3 of the typed proceedings dated 31/3/2017, the said preliminary objection was set to be argued by the way of written submission. He said parties were required to comply with the scheduling order and the date of ruling was fixed to 18/5/2017.

However, he said on the said date i.e 18/5/2017, it was discovered that the parties did not comply with the scheduling order and it was proper for the Hon. Chairman

to proceed with the hearing of the case because failure to comply with scheduling order entail, they abandoned their preliminary objection.

In regard to the 4<sup>th</sup> ground of appeal that the Tribunal refused to accept exhibits which showed how they acquired the land, the learned counsel for the respondent submitted that, all exhibits were admitted and they were marked as exhibit DE1, DE2 and DE3 and they were analyzed in the judgment at page 5 – 6.

He further submitted that on 3<sup>rd</sup> ground of appeal, the trial Tribunal examined well the evidence adduced before the tribunal and the first appellant's exhibits (sale agreement) were not signed by the parties. Apart from that he submitted that the 1<sup>st</sup> appellant's witnesses who was his wife was called to testify before the court but the Hon. Chairman disregarded that evidence and also the Chairman stated that neither the seller no witnesses were called before the tribunal so as to testify in that regard. He further submitted that 2<sup>nd</sup> Appellant said that he bought the piece of land from Pauline James, but the said Pauline James was not called to testify before the court.

He submitted further that, the respondent testified in that the land in dispute was his father's land which he inherited and that there were other witnesses to support his case. To him the Hon. Chairman analyzed well the evidence and he arrived at a fair decision.

In regard to 5<sup>th</sup> ground of appeal, the counsel for the respondent submitted that before the trial tribunal the case was heard in accordance with land laws. In regard

to the pieces of land in dispute being in separate location he said they are not in separate locations, the records are silent and also that issue was not raised before the trial tribunal.

In a brief rejoinder, the 1<sup>st</sup> Appellant submitted that the respondent sued them even before he was appointed as administrator of the estate of his late father and he is also insisting that the farms are not bordering each other. He concluded by submitting that he did not bring witness who sold the land to him as are all demised.

The 2<sup>nd</sup> appellant submitted that, since he had a letter of sale then he was not necessarily required to bring the seller so as to testify. He concluded by submitting that suing them jointly together created a confusion because their lands are allocated in different locations.

In rejoinder, the 3<sup>rd</sup> appellant submitted that, the Hon. Chairman disregarded the evidence of the first appellant's wife but on the other hand accepted the evidence of Ferdinand Eugene who is the uncle to the respondent and to him this is unfair and double standards. He concluded by submitting that his father occupied the land from 1983 to 2016 when he passed away and the respondent's father died 1996. The respondent sued them immediately after his father' died. He concluded by asking as to why didn't he sue him earlier before his father's death.

Having gone through both parties submissions as well courts records this court found out that apart from the grounds of appeal raised by the appellants there is

procedure irregularities omitted by the Hon. Chairman before the Tribunal in that the records are silent as to whether assessors gave out their opinion. Since this was not discovered earlier, the court re opened the proceedings to enable the parties to submit in that regard.

When invited to submit, Mr. Victor Brasio learned advocate for the respondent submitted that in the records of the District Land and Housing Tribunal, there are no opinion of assessors. He said this anomaly affects the tribunal's records and he concluded by praying for necessary orders.

On their part, the appellants, each, when invited to submit in that regard had nothing to add. They prayed this court to issue orders according to the law.

As stated earlier, the records of the District Land and Housing Tribunal are silent on the opinion of assessors. With regard to involvement and the duty of assessors before the District Land and Housing Tribunal, it is pertinent to refer to legal guidance as under the ***Land Disputes Court Act [CAP 216 R.E 216] section 23(2)*** 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 reaches the judgment."***

In the present appeal, the trial tribunal's record i.e at page 43 of the typed proceedings after the defense case was closed, the Hon. Chairman ordered the following and I quote;

***"Judgment on 31.12.2018, assessors (Juvenary and Mugishagwe) to adduce opinion."***

On the following date i.e on 31.12.2018 it was recorded and I quote;

***"Court: Judgment not ready, matter be fixed to another date. Judgment on 29.01.2019."***

It is however evident from record that the judgment was read without reading and recording the assessors opinion.

It is the requirement of the law that assessors must give out their opinion and such opinion must be read to the parties. This opinion must be recorded on the proceedings and reflected on the judgment.

In the case of ***Edina Adam Kibona vs Absolom Swebe (Sheli) Civil Appeal No. 286 of 2017*** Court of appeal of Tanzania at Mbeya citing in approve the case of ***Ameir Mbaraka and Azania Bank Corp Ltd vs Edgar Kahwili Civil Appeal No. 154 of 2015*** (unreported) where the court held inter Lia that

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

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

In **Edna Adam Kibona vs Absolom Swebe (sheli) (supra)** at page 6 of the typed judgment the Court stated that:

***"In trials before the District Land and Housing Tribunal as a matter of law, assessors must fully participate and at the conclusion of the evidence in must be required to give opinion. The opinion must be in the record and must be read to the parties before the judgment is composed."***

In our present appeal the records of proceedings are silent as to whether assessors gave out their opinion as required by law but the chairman made reference to them in his judgment. It is however not known how the said opinion found its way onto the judgment.

From the foregoing observation this court finds the District Land and Housing Tribunal's proceedings tainted with irregularity for lack of assessor's opinion and therefore, this appeal succeeds by quashing the proceedings of District Land and Housing Tribunal and set aside the judgment and any other order emanating from

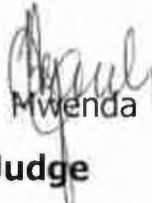


Land Application No. 78 of 2016 decided by the tribunal. Any interested party shall institute a fresh suit before a competent tribunal.

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**

29.03.2022

This Judgment is delivered in chamber under the seal of this court in the presence of the appellants and in the presence of Mr. Victor Brasio learned counsel for the respondent.



  
A.Y. Mwenda

**Judge**

29.03.2022

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