

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

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

**LAND APPEAL NO. 39 OF 2021**

(From the District Land and Housing Tribunal for Kyela at Kyela in Land  
Application No. 09 of 2014.)

**NELSON MWANKENJA.....APPELLANT**

**VERSUS**

**MBAULA DAVID.....RESPONDENT**

**JUDGEMENT**

Date of Hearing : 16/06/2022  
Date of Judgement: 17/06/2022

**MONGELLA, J.**

The appellant sued in the District Land and Housing Tribunal for Kyela over a piece of land located at Matope village in Kyela district. He claimed to be the rightful owner of the suit land by virtue of inheritance from his late father, one Mwakanange. He claimed to have used the land between 1965 and 1979 when he left following the area being flooded. Upon returning in 2001, he found the respondent on the land. The respondent, on the other hand, claimed ownership as well. He claimed to have been given part of the land by his father way back in 1986. He claimed that his father used the land until 1986 when he gave him the land in dispute and he has been using it without interruption.



The Tribunal declared the respondent the rightful owner considering that the respondent has been using the land for quite a long time and that the matter was filed in 2014 whereby the time limit had already elapsed. The decision aggrieved the appellant who preferred the appeal at hand on one ground. He faulted the Tribunal decision for being defective on the ground that the Tribunal assessors were not actively involved.

During the hearing he appeared in person. Arguing briefly, he referred the Court to page 29 of the Tribunal proceedings contending that it is clear that after closure of evidence the assessors were not given the opportunity to air their opinion in accordance with the law. He added that even the Tribunal judgment does not include the opinion of assessors. Considering the defect, he prayed for the appeal to be allowed with costs and the Tribunal decision be quashed.

The respondent's council, Mr. Ignas Ngumbi, conceded to the ground of appeal. He submitted that both, the proceedings and judgment do not reflect the participation of the assessors with regard to their opinion. However, on the other hand he challenged the appellant's prayer for costs. He contended that since the irregularity was committed by the Tribunal and not the parties, it is fair that each party bears his own costs of the case.

Referring to a decision of this Court on the case of **Castor Mbembela vs. Rahel Mwakyusa & Another**, Land Appeal No. 57 of 2020 (HC at Mbeya, reported at Tanzlii), he argued further that the way forward is not to quash the whole proceedings, but the judgment only and to have the case file

remitted to the Tribunal for it to avail the assessors the opportunity to air their opinion and thereafter for a proper judgment to be composed reflecting the opinion of assessors. He prayed for the decision to be quashed with no costs.

After considering the learned counsels' submissions, I find that both of them are in consensus that the Tribunal committed an irregularity by not availing the assessors an opportunity to air their opinions and to reflect the opinion in its judgment. The law requires the proceedings to reflect the assessors' participation by giving their opinion after closure of the evidence by both sides and before composition of judgment. It also requires the Tribunal to consider the opinion of assessors in its judgment. See **Regulation 19 (2) of the Land Disputes Courts (the District and Housing Tribunal) Regulation, 2003** and **Section 23(1) and (2) of the Land Disputes Courts Act, Cap 216, R.E. 2002.**

The position of the law was also cemented in the case of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (CAT at Mbeya, unreported); and **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017 (CAT at Mbeya, unreported). In the latter case the Court held:

*"In view of the settled position of the law, where the trial has been conducted with the aid of the assessors,...they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed...since regulation 19(2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such*





*opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict."*

See also: ***Dora Twisa Mwakikosa v. Anamary Twisa Mwakikosa***, Civil Appeal No. 129 of 2019 (CAT at Mbeya, unreported). In consideration of the irregularities stated hereinabove, and on the strength of the authorities referred to herein, The Tribunal judgment and proceedings are found to be improper. However, for interest of justice and saving of time and resources for the parties and the Tribunal, I agree with Mr. Ngumbi that the matter should start from the stage of airing opinion by the assessors in consideration of the fact that the rest of the proceedings reflect active participation of the assessors. A leaf is borrowed from the case of ***Livingstone Batholomeo @ Urassa vs. The Republic***, Criminal Appeal No. 334 of 2017 (CAT at Arusha, reported at Tanzlii); and that of ***Salehe s/o Rajabu @ Salehe vs. The Republic***, Criminal Appeal No. 318 of 2017 (CAT at Arusha, reported at Tanzlii) in which the Court of Appeal, after finding the High Court decision defective for defective summing up to assessors, ordered the matter to be retried starting at the stage of summing up to assessors.

I therefore only nullify the Tribunal judgment and the proceedings after closure of evidence by the parties. I order for the case file to be remitted back to the Tribunal to proceed from availing the opinion of assessors by the same set of assessors and for a proper judgment to be composed and pronounced by the same Chairman by reflecting the opinion of assessors. If the presiding Chairman shall not be available, the judgment shall be



composed and pronounced by another Chairman. If both assessors are not available the matter shall be tried *de novo*. Thereafter an aggrieved party may wish to take necessary steps to challenge the decision. Each party shall bear his own costs of the case.

Dated at Mbeya on this 17<sup>th</sup> day of June 2022.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Judgement delivered in Mbeya in Chambers on this 17<sup>th</sup> day of June 2022 in the presence of Ms. Rehema Mgeni, learned advocate, holding brief for Mr. Ignas Ngumbi, advocate for the respondent.



  
**L. M. MONGELLA**  
**JUDGE**