

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

AT BUKOBA

MISC. LAND APPEAL NO. 37 OF 2021

(Arising from Civil Case No. 2/2018 of Magata/Karutanga Ward Tribunal and District Land and Housing Tribunal Muleba Appeal No. 1/2019)

1. STAIPHOID SALAPION
2. JENITHA SALAPION
3. TOROJESTA SALAPION
4. EDMET SALAPION
5. JUSTA SALAPION

.....**APPELLANTS**

VERSUS

SPENSIOZA SALAPION..... RESPONDENT

JUDGMENT

Date of Judgment: 29.03.2022.

Mwenda, J

Before Magata Karutanga Ward Tribunal the respondent successfully sued the appellants for trespass into her land in Civil Case No. 2/2018. She alleged to have inherited it from her aunt in 1972. The said aunt died in 1986. On their part the appellants alleged the said land belonged to their deceased father who passed away in 2017. Having analyzed the evidence from both sides, the trial Tribunal ruled in favor of the then applicant, now the respondent. Aggrieved by trial tribunal's decision the present appellant lodged their first appeal before the District Land and Housing Tribunal of Muleba. Having analyzed the submissions of both

sides the Hon. Chairman upheld the trial tribunal's decision. Again, aggrieved by the decision of the District Land and Housing Tribunal the appellants have lodged the present appeal with five grounds as follow:

- 1) That, the District Land and Housing Tribunal erred in law and fact to deny appellants right of fair hearing, we pray this Hon. Court be please to found out such irregularity made by Ward Tribunal as the District Land and Housing Tribunal Chairman unreasonable neglected to consider our merited seven grounds of appeal with oral submission there of adduced during hearing leaving of the appeal that is a miscarriage of justice.(sic)
- 2) That, the District Land and Housing Tribunal Chairman misdirected himself in fact, in law and procedure and bias in his judgment for reasons of being on one sided of respondent and going by this fact the Chairman without sufficient and justifiable reasons thereof refused to consider the correct opinion of his gentleman assessors Mr. Juvenary and Mugishagwe who were right.(sic)
- 3) That, the District Land and Housing Tribunal Chairman erred in law and fact and procedure to give weight to the allegation that the respondents claim was supported by the views of neighbors and villagers also leaders ie. Retired Hamlet Chairman and current Hamlet Chairman, the observations of the District Land and Housing Tribunal Chairman are inconsistency with the procedure and an error of the law because not proper in law to base on

public opinion or gathered neighbors, villagers and Retired Hamlet Chairman or the current Hamlet Chairman who were not witnesses in this case as their statements never recorded in the proceedings and be cross. Examined according to the procedure.(sic)

4) That, the District Land and Housing Tribunal Chairman erred in law and fact by relying on the unfound allegations that appellants failed to prove on how they acquired the disputed land as going by the evidence on records and taking into consideration the testimonies of appellants and their witnesses before the Ward Tribunal it was crystal clear appellants proved the disputed land to be property of late Salapion who sold a piece of it to one Adam then gave another piece to his son one Simeon respondent was aware but never raise any complaints thereof. As late Salapion died intestate in 2017 his estate including the disputed land are to be distributed to his heirs as to probate cause No. 31/2018 Muleba Urban Court the copy of judgment was attached at paragraph 5 (five) of the petition appeal but was not considered by District Land and Housing Tribunal Chairman this a miscarriage of justice.(sic)

5) That, Deogratias Rwegasila gave false evidence and such evidence could not stand as in the year 1972 he was a young boy of premature age not accepted to take part in witnessing any agreement appellants complains thereof at Ward Tribunal but was not been heard still the Chairman of to

District Land and Housing Tribunal neglected to record the same during the submission of appellants. (sic)

When this appeal came for hearing the 1st, 2nd and 4th appellant appeared in person without legal representation. The 3rd and 5th appellant faulted appearance. However as they both were aware of the date fixed for hearing of this appeal, this Court directed the hearing to proceed in their absence. On her part, the respondent, through power of attorney duly signed and registered, was represented by Mr. Mohamed Said.

In the course of going through the records of appeal this court noted an anomaly with involvement of assessors in the proceedings. The parties were thus invited, on top of submitting in respect of the grounds of appeal to also submit with regard to the said anomaly.

When invited to submit in support of appellants grounds of appeal the 1st Appellant submitted that. In 2017 their father died leaving five children, a widow and two farms. He said before the Ward Tribunal the respondent called a witness who alleged he was present in 1972 when the respondent was being allocated the land in dispute. The 1st appellant said that the said witness was born in 1959 and by 1972 he was just a young boy of about 13 years old. He concluded his submission by stating that they did not agree with his evidence but the tribunal considered accorded weight on it. With regard to involvement of assessors before the District

Land and Housing Tribunal the 1st appellant submitted that he leaves it to the court to decide as he is not conversant with legal matters.

On his part, the 2nd Appellant submitted that they claim the land in dispute because it belonged to their late, deceased father. He said after their father had passed away the 1st appellant was appointed the administrator of his estate. Before he could administer the estate, the respondent sued them for trespass. He added that the respondent who alleged to be allocated the land by their aunt in 1972 did not prove that allegation. He said, the land in dispute was a small portion in a big land which their late father divided into two portions in the year 2000. One portion was sold to one Adam and another portion was allocated to their brother one Simeon Sarapion. He said the remaining portion was the land in dispute. He then asked if at all the respondent was allocated the same by their aunt in 1972 why didn't she sue their father who partitioned it back in 2000. With regard to involvement of assessors before the District Land and Housing Tribunal the 2nd appellant submitted that he leaves it to the court to decide as he is not conversant with legal matters.

On her part 4th Appellant's when invited to make submission in support of the appeal she said she has nothing to say as what she intended submit was already covered by the 1st and 2nd Appellant. Also with regard to involvement of assessors before the District Land and Housing Tribunal she submitted that she leaves it to

the court to decide as he is not conversant with legal matters. She thus prayed this appeal to be allowed.

Responding to the appellant's submission Mr. Mohamed Said for the respondent averred that two witnesses appeared before the Ward Tribunal to testify for the respondent with regard to allocation of land from the appellant's aunt. The first one is Celestine Bukamba who is 100 years old. The other one is Deogratias Mugishagwe who is now 80 years old. He said, that the said farm (Land in dispute) did not belong to the appellants deceased's father rather it belonged to their aunt Bukamushumi who gave it to Spesioza who is the appellant's sister. He added that this farm was not a portion of the farm which the appellant's late father divided and transferred.

He went to submit further that before the Ward Tribunal, the Locus in quo was visited on 25/9/2020 and various witnesses were involved such as VEO, WEO, Clan Counsel members, Respondent, neighbors and Hamlet chairman. At the end of the day the appellants lost. With regard to opinion of assessor not featuring in the proceedings he submitted that he has nothing to say as he leaves it to the court to decide. He then concluded by submitting that the said farm has no connection with the appellant's father.

In rejoinder only the 1st Appellant stood up and submitted that the age of Celestine Bukama and Deogratias Mugishagwe was not proved and insisted that the land in dispute was part of the land which was divided by their late father.

Having summarized submissions by the both parties, the issues for determination is whether the present appeal is meritorious.

As I have stated earlier, in the cause of going through the appeal's records, this court noted that the opinion of assessors was not recorded in the proceedings. From that discovery, the court suo moto invited the parties to submit in that regard. However, all of them did not have anything of essence to submit in that regard rather than leaving it to the court to decide.

In the proceedings of the District Land and Housing Tribunal, the Hon. Chairman did not record the opinion of assessors. The record shows on 02.04.2020 the Tribunal set the date of mention for hearing of assessors on 29.04.2020.

However, on the said date, i.e. on 29.04.2020 the Hon Chairman recorded as follows;

Tribunal: The assessors have read their opinion in the presence of the parties, they have both unanimously opined in favor of the appeal (sic). Having heard the opinions (sic) let the judgment date be fixed."

It is trite law 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 **(Please see S.23(2) of the Land Disputes Courts Act, Cap 216 RE. 2019.**

To amplify the above legal position, **Regulation 19(2) of the land Disputes Courts (The District Land and Housing Tribunal) Regulation, GN.174/2003** reads:

"19 (2) Notwithstanding sub-regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessors may give his opinion in Kiswahili."

In the case of **Abdul Shaban vs. Jonathan Aron Rugaimukamu, Land Appeal No. 45 of 2019** (unreported) this court while citing the case of **Tubone Mwambeta V. Mbeya City Council, Civil Appeal No. 287 of 2017 CA**,(unreported) and **Edina Adam Kibona V. Absalom Swebe(Sheli) ,Civil Appeal No. 286 of 2017,CA** (Unreported) held inter alia that:

"...every assessor must give his /her opinion in writing and to ensure fair trial of the case, such opinion must be read before the tribunal in the presence of the parties before the case is scheduled for judgment. Apart from reading the opinion in the presence of the parties, all these processes must be reflected on the proceedings of the tribunal than merely seeing such opinion

acknowledged by the chairman in the judgement.” [emphasis added]

In the present appeal, as already stated above, the proceedings do not show whether the assessors gave their opinion as it is not reflected on the record rather, the Hon. Chairman appears to have just acknowledge the said opinion in his judgment which is not proper. Under such circumstances, it is as good as the assessors were not fully engaged. This anomaly alone is sufficient to nullify the proceedings of the District Land and Housing Tribunal. For that matter, this court finds no reasons to deliberate on the other grounds of appeal.

This appeal therefore is allowed by quashing proceedings and setting aside judgment and orders of the District Land and Housing Tribunal.

Each party shall 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 1st, 2nd and 4th appellants and in the presence of respondent.




A.Y. Mwenda

Judge

29.03.2022