

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

AT BUKOBA

MISC. LAND APPEAL NO. 8 OF 2021

(Arising from the District Land and Housing Tribunal for Kayanga at Karagwe in Land Appeal No. 90 of 2016 and Original Land Case No. 21 of 2016 at Kayanga Ward Tribunal)

HELENA MINYAGO..... APPELLANT

VERSUS

1. MARCO GERVAZI RESPONDENTS

2. GASPARY RWAMUHULU

EXPARTE JUDGMENT

Date of Judgment: 12.05.2022

Mwenda, J.

This is an exparte judgment against the decision of the District Land and Housing Tribunal for Kayanga at Karagwe in Land Appeal No. 90 of 2016 where by Ms. Helena Minyango (the Appellant) being dissatisfied with the said judgment preferred this appeal with three (3) grounds.

When this appeal came for hearing on 29. 09. 2021, Mr. Raymond Laurent, the learned counsel for the appellant prayed this appeal to proceed exparte against the respondents following the proof of service against the respondents but failed to enter appearance before the court.

During the hearing of this appeal this court, *Suo motu*, noted an irregularity on the proceedings of the District Land and Housing Tribunal regarding assessors' opinion. The advocate for the appellant was then invited to submit only on that regard as the said irregularity is capable of disposing off this appeal.

Following the said directive, Mr. Laurent, the learned counsel for the appellant submitted that the proceedings before the District Land and Housing Tribunal are tainted with irregularity for lack of assessors' opinion.

He submitted that assessors' opinion is not reflected in the whole proceedings. He said, at page 6, on 8/6/2017 the Tribunal fixed a date for assessors' opinion to be the 24/11/2017. But on the said date, the assessors' opinion was not ready. Thereafter, the tribunal fixed another date for assessors' opinion which was 21/12/2017. He further submitted that on the fixed date assessor's opinion was not ready but the tribunal proceeded to fix a date for judgment which was 9/1/2018. He said, on 9/1/2018 the judgment was delivered to the parties without assessors' opinion. He further submitted that, neither in the proceedings nor in the judgment the Hon. Chairman assigned reasons for lack of assessors' opinion. He submitted that, this is contrary to Section 23 (2) of Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN. 174/2003 which require the assessors to

give out their opinion before the Hon. Chairman delivers his judgment. He then prayed the said judgment to be nullified.

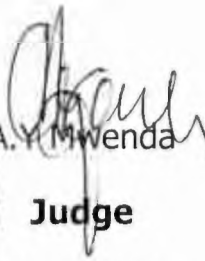
Having gone through the submission by the learned counsel for the appellant as well as proceedings of the District Land and Housing Tribunal this court is in agreement with the learned counsel for the appellant that the proceedings and the judgment of the District Land Housing Tribunal for Kayanga at Karagwe in Land Appeal No. 90 of 2016 is tainted with irregularities for lack of assessors opinion, which is contrary to section 23(2) of the Land Dispute Courts Act [CAP 216 R.E 2019] and Regulation 19 (2) of the Land Dispute Court Act (The District Land and Housing Tribunal) Regulation, GN 174 of 2003. This court therefore grant the prayer as prayed by the learned counsel for the appellant.

This appeal therefore, succeeds by quashing the proceedings in Land Appeal No. 90 of 2016 before the District Land and Housing Tribunal for Kayanga at Karagwe and this court hereby set aside the judgment and any other order emanating therefrom. Parties shall remain in their positions which they had before filing of the present appeal and for that matter the Ward Tribunal's decision stands. Any interested party wishing to pursue his rights shall institute a fresh suit before a competent Tribunal.

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

It is so ordered.





A.Y. Mwenda

Judge

12.05.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Raymond Laurent learned counsel for the Appellant and in the absence of the respondents.




A.Y. Mwenda

Judge

12.05.2022