

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

LAND APPEAL NO. 11 OF 2020

(Arising from Land Application No. 325 of 2017 at Dodoma District land and Housing
Tribunal)

FLUGENCE KASEGE APPELLANT

VERSUS

LUCY KIGOSI RESPONDENT

25/4/2022 & 17/5/2022

JUDGMENT

MASAJU, J

The Respondent, Lucy Kigosi, successfully sued the Appellant, Flugence Kasege, in the District Land and Housing Tribunal for Dodoma at Dodoma. Aggrieved with the trial Court's decision the Appellant has come to the Court by way of an appeal.

The Appellant's petition of Appeal is made up of four (4) grounds of appeal, one of them being thus,

" 3. That, the trial Tribunal erred in law and fact for deciding the matter basing to the defective proceedings."

When the appeal was heard in the Court on the 25th day of April, 2022, both parties were represented. The Appellant was in service of Miss Maria Ntuli, Advocate while the Respondent was represented by Ms. Joanita Paul, Advocate.

The Appellant submitted only on the 3rd ground of appeal supporting the appeal that, the opinion of the assessors who took part in the trial were not read over to the parties prior to the judgment. Neither were the same reflected in record of proceedings. That, this is contrary to Regulation 19 (2) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations, 2003 and the decision of the Court in **Edna Adam Kibona V. Absolom Swebe (Sheli)** (CAT) Civil Appeal No. 286 of 2017, Mbeya Registry, unreported. That, the remedy thereof is nullification of the trial and that the parties may wish to go for trial "*devono*" before the trial Tribunal.

On her part, the Respondent conceded the Appellant's submission on the violation of the legal requirement.

That is what was shared by the parties in support of the appeal in the Court.

Indeed, the Court is inclined to agree with the parties that legal requirement of the opinion of the assessors to be read out before making of the judgment as so provided by Regulation 19(2) of the Land Dispute Courts (The District Land and Housing Tribunals) Regulations, 2003 was violated by the trial Tribunal as the original record of proceedings so reveals.

This is also contrary to the decision of the Court in **Tubone Mwambeta V. Mbeya City Council** (CAT) Civil Appeal No. 287 of 2017, Mbeya Registry (unreported) where the Court held,

"...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."

In the instant case the written assessors' opinion are reflected in the original file record but the same can not be traced to have been read out at the conclusion of the trial.


That said, the trial Tribunal defaulted a crucial and mandatory procedure about the assessors' written opinion being read in the presence of the parties prior to the composition of judgment thereof by the trial Chairman. The purported trial and judgment thereof was a nullity since the said irregularity can not be cured by section 45 of the Land Disputes Courts Act, [Cap 216] for it occasioned failure of justice in that the parties were not well informed of the nature of the opinion given out by the assessors and whether or not the said opinion were considered by the trial chairman when he composed the impugned judgment.

The Court therefore, hereby invokes her revisionary powers by virtue of section 43(1) (b) of the Land Disputes Courts Act [Cap 216] to nullify the

trial, quash and set aside the judgment, order and decree given by the trial Tribunal.

There shall be trial "*denovo*" of the dispute in the trial Tribunal but before another chairman with different set of Assessors except if there is amicable settlement of the dispute by the parties.

The parties shall bear their own costs.



GEORGE M. MASAJU
JUDGE
17/5/2022