

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

AT BUKOBA

LAND APPEAL NO. 08 OF 2021

(Arising from the Application No. 43/2016 of District Land and Housing Tribunal for Muleba at Muleba)

SAID ABDUL RUGEMA

MODEST HENERY



.....**APPELLANTS**

VERSUS

WINFRIDA KALENZI

(Administratrix off the estate of the late Costancia Odilo).....**RESPONDENT**

JUDGMENT

Date of Judgment: 01.07.2022.

A.Y. Mwenda J,

This is an appeal against the decision of the District Land and Housing Tribunal for MULEBA in Land Application No. 43 of 2016. The brief background of the matter is that before the District Land and Housing Tribunal for Muleba at Muleba, the respondent instituted a suit against the appellants for declaratory order that the respondent (by virtue of being Administratrix) is the lawful owner of the disputed land premise (sic), for vacant possession of the suit land for the respondent to use, costs and any other relief the Hon. Tribunal would deem fit and proper to grant. At the final disposal of the suit the judgment was entered in favor of the respondent by allowing her application and declaring that the suit land is among the estates of the late CONSTANTINE ODILO subject to be

distributed by the administrator to the rightful heirs. The appellants were also ordered to give vacant possession of the land as they did not lawfully purchase the same.

Aggrieved by the Trial Tribunal's findings the appellants petitioned the present appeal with three (3) grounds of appeal which reads as follows and I quote;

- 1) That, despite of an ample and undisputed testimonies brought by the appellant to substantiate the entered sale transactions of the Suitland the tendered exhibits DE3 and exhibit DE4 as dissolved by the trial tribunal in regards to the 3rd issue the learned chairman grossly erred in law and fact by finally holding that the vendor one Blandina Tilukaizile had no good title to pass.
- 2) That, although not bound by the assessor's opinions the learned chairman erred in law and facts by failure of concurring with them and dismissing the suit forthwith on account of the time limitation from the bare and uncontested truth of the physical occupation and use of the Suitland from 2000 by appellant.
- 3) That learned chairman immensely misdirected himself by also delivering his judgment basing on the produced decisions on the appointment of the administrators of the deceased Costancia Odilo and Blandina Tilukaizile which were petitioned on falsehood.

Upon receipt of the copy of the grounds of appeal, the respondent contested it by filing her reply and as such parties were invited by the court to appear for hearing. When this appeal came up for hearing the appellant was represented by Mr. LAMECK ERASTO, learned Counsel while the respondent appeared in person without legal representation.

During the hearing of this appeal, this Court, *SUO MOTU*, invited the parties to submit in regard to illegality noted in respect of the opinion of assessors as reflected at page 78 &79 of the typed proceedings. Since this illegality, once proven, was capable of disposing this appeal, parties were instructed to abandon other grounds as appearing on the record.

In his submission, Mr. LAMECK ERASTO, submitted that the involvement of assessors in the proceedings before the District Land and Housing Tribunal is covered under Section 23(1) of the Land Disputes Courts Act, [Cap 216 R.E. 2019]. In the said section, he said, it is stated that the Tribunal shall be constituted when the Chairman sits with the aid of not less than two assessors. The learned Counsel further submitted that under Section 23(2) of the said Act, Assessors are required to give opinion before the chairman delivers judgment. Further to that, he stated that Under the Land Dispute's Court's (The District Land and Housing Tribunal) Regulations of 2002, at Regulation 19(2) it is stated that the Chairman shall require every assessor involved in the proceedings to issue his opinion.

The learned Counsel went on to submitting that at page 78 of the typed proceedings assessors appearing in the Coram are P. JOVENARY and B. MUGISHAGWE but their opinion was not recorded. He said, instead of recording their opinion the Hon. Chairman summarized their opinion as if they were ~~witnesses. The learned Counsel said, by doing so the whole proceedings and~~ judgment are a nullity.

On her part, the respondent did not have anything to submit and prayed the court to deal with this matter judiciously.

Having summarized the submissions by both parties it is now the duty of this Court to deliberate on this appeal. As I have stated above, this court noted that the Hon. Chairman failed to record the summary of the opinion of each assessor as required by the Law. At page 78 & 79 of the typed proceedings i.e. on 29/09/2020 when the date was set for assessors' opinion, the records show the Hon. Chairman recorded as follows and I quote:

*"The matter comes up for hearing of assessors' opinion.
the assessors Mr. MUGISHAGWE and Mr. JUVENARY
have read their opinion in the presence of the parties.
They have opined in favor of respondents to the effect
that he properly proved their case. Having heard the
opinion let the date of judgment be fixed."*

Looking at the said summary it is revealed that the same was done in violation of law. It is the legal requirement that before the Hon Chairman delivers a judgment, the assessors have to register their opinion and the same shall be considered by Hon. Chairman in making his Findings. In the case of ~~REV. PETER BENJAMIN V. TUMAINI MTAZAMBA @MWEMA, LAND APPEAL NO. 69 OF 2019,~~ this court while citing the case of TUBONE MWAMBETA V. MBEYA CITY COUNCIL, CIV. APPEAL NO. 287 OF 2017, CAT (Unreported) held inter alia that:-

*"...the involvement of assessors is crucial in the adjudication of land disputes because apart from constituting the tribunal, it embraces giving their opinion before the determination of the dispute. As such, **their opinion must be on record.**" [emphasis added]*

With regard to the opinion of assessors, the court, in the same case, issued a format on how each assessor's opinion should be recorded in the proceedings.

The court said and I quote:-

"On the date fixed for assessors opinion, the proceedings, for instance, should read as follows:

Date: 10th August 2021

Coram: S.J Mashaka-Chairman

Members: T.J Kashisha and J.N. Ndoma

Applicant: Present in person

Respondent: Present in person

Tribunal: The case is coming for assessors' opinion

Applicant: I am ready for the opinion

Respondent: I am ready too.

Assessors opinion:

1st assessor-T.J. Kashisha

Maoni yangu ni kwamba.....

2nd assessor-J.N Ndoma:

Katika kesi hii maoni yangu

Tribunal:

Assessors' opinion read before the Tribunal in the presence of the Parties.

Order: Judgment on 20th August, 2021

Sgd: S.J.Mashaka

Chairman

10th August, 2021

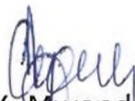
Regarding consequence for failure to record the said opinion properly, in the same case, the court went on to state further and I quote:-

"In the case at hand, as already stated, the proceedings do not show whether the assessors gave their opinion. Under the law, it is as good as, assessors were not fully involved. This faulty alone is sufficient to nullify the proceedings of the trial tribunal." [emphasis added]

In the present appeal, since the Hon. Chairman failed to record the opinion of assessors in line with the format above, it is as if the assessors were not involved at all and as such the whole proceedings and judgment of the District Land and Housing Tribunal are a nullity. This appeal therefore succeeds to the extent of nullifying the proceedings and judgment of the District Land and Housing Tribunal. If the respondent still wishes to pursue her rights she can institute a fresh suit before the competent Tribunal. Otherwise there is no order as to costs.

It is so ordered.




A.Y. Mwenda
Judge

01.07.2022

Judgment delivered in chamber under the seal of this court in the presence of Ms. Erieth Barnabas learned Advocate for the Appellants and in the presence of Ms. Winfrida Kalenzi the Respondent.


A.Y. Mwenda
Judge
01.07.2022

