

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

AT BUKOBA

LAND APPEAL NO. 23 OF 2022

(Arising from the District Land and Housing Tribunal for Karagwe at Karagwe in Land Appeal No. 76 of 2018 and original Land Case No. 05 of 2017 at Bugene Ward Tribunal)

ANYESI CHARLES BYAMPANJU..... APPELLANT

VERSUS

WILLIAM CHAMWIRU.....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 KARAGWE in Land Appeal No. 76 of 2018. The brief background of the matter is that before BUGENE Ward Tribunal, the appellant instituted a suit against the respondent for trespass into her piece of land which she was given by her father in-law. Having received the said piece of land she went on using it by cultivating various crops. However, following her misunderstanding with her husband she left and spent sometimes out of the village and when she returned back she found the respondent occupying her land. Following these claims, the hearing of the case commenced where both parties adduced their respective evidence and at the end of the day it was the Ward Tribunal's findings that she (the appellant) failed to prove her case. As such the

respondent was declared as the rightful owner of the land in dispute as his evidence was found heavier than that of the appellant.

Aggrieved by the Ward Tribunal's findings the appellant appealed before the District Land and Housing Tribunal for KARAGWE where her appeal was dismissed. Again, dissatisfied by the said judgment, the appellant approached this Court with an appeal containing five (5) grounds which reads as follows and I quote;

- 1) "That, the Hon. Tribunal grossly erred in law and fact for failure to detect (sic) procedures and principles governing visiting a locus in quo were totally not complied with.
- 2) That, the Hon. Tribunal erred in law for failure to detect that the trial tribunal was not well constituted as per the requirement of the law in regard to gender.
- 3) That, the Hon Tribunal erred in law to hold that the duty to ascertain jurisdiction is vested to the parties while the same is mandatorily required to be satisfied before the court embarks into hearing of any case.
- 4) That the Hon. Tribunal erred in law and fact to declare the Applicant as the lawful owner without taking into consideration that there was no any written contract tendered and that the purported contract was neither witnessed by the village chairman and neighbor's as legal requirement.
(sic)

5) That the Hon. Tribunal erred in law and fact for failure to hold that the respondent failed to summons material witnesses who are neighbors as the appellant did hence the trial tribunal composed the judgment against the weight of evidence tendered.”

upon receipt of the copy of the memorandum of appeal, the respondent contested it by filing his reply and as such parties were invited by the court to appear for hearing. When this appeal came up for hearing both parties appeared in person without legal representation.

During the hearing of this appeal the Appellant submitted that the respondent bought the land without involving her as a neighbor. She also said that during the visit of locus in quo she showed the boundaries but the Ward tribunal did not consider it. The appellant further stated that even her witnesses were not involved in that exercise (i.e visit to the locus in quo). She concluded her submission by stating that before the Ward Tribunal, the respondent neither described the boundaries nor issued any sale agreement. She thus prayed her appeal to be allowed with costs.

On his part, the respondent informed this court that he has nothing submit. He only prayed for his reply to the petition of appeal to be adopted and considered as part of his submissions.

After the parties have concluded their submissions, the court fixed a judgment date but in the cause of preparing the same there was a discovery of an illegality

on the proceedings of the District Land and Housing Tribunal. This discovery triggered this court to re-open the proceedings. The said anomaly is failure by the Hon. Chairman to record assessors' opinion as required by the law. Parties were thus invited by the court to submit in that regard but being laypersons, ~~they informed this court that they have nothing to say rather than leaving it to~~ the court to decide.

As stated above, this court noted that the Hon. Chairman failed to record the opinion of each assessor as required by the Law. At page 13 of the typed proceedings i.e. on 19/01/2021 when the matter was fixed for assessors' opinion the records show the Hon. Chairman recorded as follows and I quote:

"The matter comes up for reading of assessors' opinion, the assessors Mr. MSHASHU and Miss LUKULETIA have their opinion in the presence of the parties, they have opined in favor of respondent to the effect that he properly proved her(sic) case. Having heard the opinion let the date of judgment be fixed."

A closer look at the above summary shows that the opinion of assessor was recorded 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]

In regard to how the opinion of assessors should be recorded, the court, in the same case, issued a format in the following words 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 opinion properly, in the same case, the court stated further and I quote that:-

"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 therefore, since the Hon. Chairman failed to record the opinion of assessors in line with the guidance above, it is as if the assessors were not involved at all and as such the whole proceedings of the District Land and Housing Tribunal is a nullity. This appeal therefore succeeds to the extent ~~of nullifying the District Land and Housing Tribunal and as such the decision of~~ the Ward Tribunal stands. If the appellant still wishes to pursue her rights of appeal against the decision by the Ward Tribunal, she can do so before a 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. Anyesi Charles Byampanju the Appellant and in the presence of Mr. William Chamwiru the Respondent.




A.Y. Mwenda

Judge

01.07.2022