

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

LAND APPEAL NO. 70 OF 2021

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Appeal No. 48 of 2020 and original Civil Case No. 05 of 2020 at Ishunju Ward Tribunal)

YUNISI DEOGRATIAS..... APPELLANT

VERSUS

JOHN WILLIAM..... RESPONDENT

JUDGMENT

Date of Judgment: 22.07.2022

A.Y. Mwenda J,

The appellant (Ms. Yunisi) has filed this appeal challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 48 of 2020. In that matter the appellant who stood as respondent was condemned to refund the purchase price and all the development costs incurred on the land in dispute to the applicant (now the respondent). It was also ordered that if she fails to do so the said land in dispute would remain to be property of the applicant (now the respondent).

Being dissatisfied by such a decision she appealed to this court with four (4) grounds of appeal which reads as follows and I quote;

- 1) That the trial Chairman erred in law for receiving and honoring new exhibit to wit sale agreement of which is deferent from that was tendered in the trial stage.
- 2) That the trial tribunal chairman erred in law for holding that the suit land ~~belongs to the respondent.~~
- 3) That the learned chairman erred in law in delivering the contradictory judgment and decree as if the suit was at first instance.
- 4) That the learned chairman erred in law for placing himself in position of the Trial Tribunal.

When this appeal was scheduled for hearing both parties appeared in person without legal representation.

Before the hearing of this appeal could start, this court Suo Motu, noted irregularity in the proceedings of the District Land and Housing Tribunal regarding assessors' opinion which is missing on the record. Since this was not among the grounds of appeal, parties were then invited to submit only in that regard because the said irregularity has the effect of vitiating the proceedings.

In her submission, the appellant submitted that on 28th June 2021 the gentlemen assessors issued their opinion. She said she don't know why the Hon. Chairman failed to record their opinion properly. She concluded by stating that she leaves it to the court to decide.

On his part, the respondent had nothing to add as he left it to this court to decide.

As stated above, this court noted that the records of the District Land and Housing Tribunal does not reflect whether the assessors gave out their opinions as required by the Law. At page 9 of the typed proceedings i.e. on 28/06/2021 when the matter was fixed for assessors' opinion the records show that the Hon. Chairman recorded as follows and I quote:

"Shauri linakuja kwajili ya maoni

Wadaawa: Tupo tayari

Amri: Hukumu 30.06.2021"

A closer look at the above summary shows that there was no opinions of assessor which was read to the parties. 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 the 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 read and 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.

Guided by the above position of law 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 any aggrieved party still wishes to pursue her rights of appeal against the decision by the Ward Tribunal, he/she can do so before a ~~competent tribunal. Otherwise, there is no order as to costs.~~

It is so ordered.


A.Y. Mwenda
Judge
22.07.2022


Judgment delivered in chamber under the seal of this court in the presence of Ms. Yunisi Deogratias the Appellant and in the absence of the Respondent.


A.Y. Mwenda
Judge
22.07.2022
