

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

LAND CASE APPEAL NO. 46 OF 2018

*(Arising from Application No. 35 of 2015 from the District Land and Housing Tribunal of Kagera at
Karagwe)*

THEOPHILDA AUGUSTINE.....APPELLANT

VERSUS

EDNA MATUMBA.....1ST RESPONDENT

KOKU MODEST.....2ND RESPONDENT

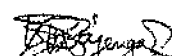
JUDGMENT

06th July & 12th August 2022

Kilekamajenga, J.

The parties in this case are contesting over ownership of a piece of land located at Nyakatuntu Ward within Kyerwa District. It is alleged that the first respondent sold the disputed land to the second respondent and the sale agreement was witnessed by the head of the clan called John Fredrick. On the other hand, the appellant alleged that the disputed land belonged to her husband who is now the deceased. In her view, the land is part of the deceased's estates. After the hearing of the case, the trial tribunal ordered the appellant to redeem the land and compensate the developments done on the land.

Being unhappy with decision of the trial tribunal, the appellant appealed to this Court. She framed six grounds to impugn the decision of the trial tribunal. However, due to the reasons to be stated below, I find no reason to reproduce



the grounds of appeal in this brief judgment. When the parties appeared for hearing before this Court, the appellant had no legal representation than his own appearance. The respondents, who were all present, hired the legal representation of the learned advocate, Mr. Lameck John. As the appellant was unrepresented and she is a lay person, the counsel for the respondent prompted the court on the illegalities noted in the proceedings of the trial tribunal.

The counsel argued that, there was illegality in the attendance and involvement of assessors in this case. For instance, the tribunal framed issues in absence of the assessors. Also, the case commenced hearing in absence of the assessors. On 15th January 2018, one assessor appeared but there are no reasons to explain the absence of the other assessor. On 20th July 2018, the assessor is marked nil but no reasons were given. Finally, the tribunal scheduled the case for assessors' opinion but such opinions do not appear in the proceedings. When composing the judgment, the chairman cited section 23 of the Land Disputes Courts Act while the assessors did not attend the hearing of the case. This illegality vitiates the proceedings of the trial tribunal and the court should quash and set aside the decision of the trial tribunal and leave the matter open for any interested person to file a fresh suit.

The appellant, on the other hand, simply supported the submission made by the counsel for the respondents and thereafter there was no rejoinder submission.

In the case at hand, the major issue for determination is whether the assessors were properly involved in the hearing of the case and whether their opinions were solicited before the chairman composed the judgment. Under **section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 2019**, the law provides:

*"23 (1) The District Land and Housing Tribunal established under Section 22 shall be composed of one chairman and not less than two assessors; and
(2) The District Land and Housing Tribunal shall be dully constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment".*

Also, **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** provides that:

*"19 (1) The tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgment on the spot or reserve the judgment to be pronounced later;
(2) Notwithstanding sub – regulation (1) the chairman shall, before making his judgment, require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessor may give opinion in Kiswahili".*

In the light of the above provisions of the law, the chairman is legally bound to ensure that every case before the District Land and Housing Tribunal is heard when the tribunal is fully constituted. The presence of the chairman and not less

than two assessors must be observed unless there are good reasons to account for the absence of assessors. When the assessors give their opinions, the chairman must consider such opinions and in case he/she decides to differ with them, reasons for a contrary decision must be given. **Section 24 of the Land Disputes Courts** makes it clear that:

"24. In reaching decisions, the chairman shall take into account the opinion of assessors but shall not to be bond by it, except that the chairman shall in the judgment give reasons for differing with such opinion".

The Court of Appeal of Tanzania was confronted with a similar irregularity in the case of **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble Civil Appeal No. 197 of 2018, CAT at Dodoma (unreported)** where Hon. Kerefu, J.A. observed *inter alia* that:

"It is also on record that, though, the opinion of the assessors were not solicited and reflected in the tribunal's proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the tribunal does not show that the assessors were accorded the opportunity to give the said opinion, it is not clear as to how and at what stage the said opinion found their way in the tribunal's judgment. It is also our further view that, the said opinion was not availed and read in the presence of the parties before the said judgment was composed".

Also, a similar situation occurred in the case of **Ameir Mbarak and Azania Bank Corp. Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015 (unreported)** and the Court of Appeal of Tanzania had the following to say:

"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessor which is not on the record by merely reading the acknowledgement of the chairman in the judgment. In the circumstances, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the tribunal's judgment and this was a serious irregularity."

Similarly, in the landmark case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported)**. The Court of Appeal of Tanzania reiterated the above stance of the law. In that case Hon. Mugasha, JA further insisted that:

"...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."

The Court of Appeal further stated that:


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

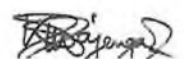
See also, the cases of **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017, CAT at Mbeya (unreported); **General Manager Kiwengwa Stand Hotel v. Abdallah Said Mussa**, Civil Appeal No. 13 of 2012; **Y. S. Chawalla and Co. Ltd v. DR. Abbas Teherali**, Civil Appeal No. 70 of 2017.

In the case at hand, as already stated above, the issues were framed in absence of assessors. Also, when the applicant's case commenced, the assessors were absent but the chairman recorded the evidence. There are no reasons to account for the absence of the assessors. At the mid of the hearing, one assessor is recorded to be present and there are no reasons to account for the absence of the other assessor. Finally, the tribunal scheduled the case for the assessor to give his/her opinion. Again, the opinion of that single assessor does not feature in the proceedings. I find this to be a total violation of the law which vitiated the proceedings of the trial tribunal. I hereby quash the proceedings and set aside the decision of the trial tribunal. The matter is now open for any interested party to file a fresh suit before a competent forum. No order as to costs. It is so ordered.

Dated at Bukoba this 12th Day of August 2022.




Ntemi N. Kilekamajenga.
JUDGE
12/08/2022




Court:

Judgment delivered this 12th August 2022 in the presence of the learned counsel for the respondents, Miss Erieth Barnabas and the appellant present in person.

Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
12/08/2022

