

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

LAND APPEAL NO. 20 OF 2022

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Land Appeal No. 64 of 2020 and original Civil Case No. 62 of 2020 at Nshambya Ward Tribunal)

ANTIDIUS AUGUSTINE.....1ST APPELLANT

AUSON AUGUSTINE.....2ND APPELLANT

VERSUS

MARTIN MUTAYOBA RESPONDENT

JUDGMENT

Date of Judgment: 12.07.2022

A.Y. Mwenda J,

The appellants filed this appeal challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 64 of 2020. In that matter the respondent who stood as the appellant was declared the rightful owner of the Suit land.

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

- 1) That the District land and housing tribunal for Bukoba at Kagera erred in law in declaring the respondent the rightful owner of the suit land while there was no evidence tendered by the parties.
- 2) That the appellate Tribunal erred in law in declaring the respondent the rightful owner of the suit land disregarding the fact that the parties had

not been given the right of hearing making the decision of the said Tribunal a nullity.

- 3) That the appellate Tribunal misdirect itself in basing its decision on the issue of whether the respondent was an administrator of the estate of the late Marcel Mutayoba and therefore reaching a wrong decision.
- 4) That the appellate Tribunal erred in law in declaring the respondent the owner of the suit land while the location of the said land had not been specifically ascertained, rendering the said decision un executable.

When this appeal was scheduled for hearing the appellants hired the legal services from Mr. Joseph Bitakwate learned counsel while the respondent appeared in person without any legal representation.

At the hearing of this appeal Mr. Bitakwate submitted that on top of the grounds of appeal, he noted irregularity in the records of the District Land and Housing Tribunal for Bukoba in Land Appeal No. 64 of 2020.

He submitted that the Tribunal's proceedings lack assessors' opinion. He said after the hearing of the Land Appeal before the District Land and Housing Tribunal the Hon. Chairman was required to take assessors opinion before delivering the judgment.

The learned counsel submitted that the assessor's opinion ought to be reflected in the proceedings. He said in the proceedings there is no assessor's opinion although it seems like they were read to the parties. He submitted that such

anomaly is fatal as it vitiates the whole proceedings. He then prayed this court to find the judgment and proceedings in Land Appeal No. 64 of 2020 a nullity and order trial de novo.

In reply to the submission by the learned counsel for the appellant, the respondent submitted that he supports the submission by the learned counsel for the appellant. He submitted that what transpired was not their fault, he said that before the Tribunal, assessors' opinions were read to them and they thought the Hon. chairman recorded them.

In this matter the issue is whether this appeal is meritorious.

Having gone through the tribunal's records as well as parties submissions, the records are clear that the Tribunal's proceedings are tainted with irregularity for lack of assessors opinion.

The said records of the District Land and Housing Tribunal do not reflect as to whether the assessors gave their opinions as required by the Law. At page 8 of the typed proceedings i.e. on 01/09/2021 when the matter was fixed for assessors' opinion the records show that the Hon. Chairman recorded as follows and I quote;

***"Wakili Bitakwate: kwajili ya warufaniwa. Shauri
linakuja kwajili ya maoni. Tupo tayari kupokea maoni.***

Baraza: Maoni yamesomwa kwa wadaawa.

Amri: Hukumu 10.09.2021

A closer look at the above summary shows that the opinions of assessors were read to the parties but were not recorded in the Tribunal's proceedings. 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 proceedings of District Land and Housing Tribunal. For that matter any order emanating therefrom is set aside. Any party wishing to challenge the decision of the Ward Tribunal, may do so. Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda
Judge

12.07.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Joseph Bitakwate the learned counsel for the Appellant and in the presence of Mr. Martin Mutayoba the Respondent.




A.Y. Mwenda

Judge

12.07.2022