

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

LAND APPEAL NO. 02 OF 2022

(Originating from Land Application No. 133/2016 of the District Land and Housing Tribunal for Kagera at Bukoba)

SILAJI MSOKE.....1ST APPELLANT

AGNESS RWEZAULA.....2ND APPELLANT

MUNICIPAL DIRECTOR OF BUKOBA.....3RD APPELLANT

VERSUS

HINDU ABBAKARY.....RESPONDENT

JUDGMENT

24th August & 25th August 2022

Kilekamajenga, J.

The first and second appellants are husband and wife who live closer to the respondent. The parties own two separate pieces of land which were surveyed under the office of the third appellant in 1998. The respondent acquired his piece of land by way of purchase from Flora Rutinwa in 2003. On the other hand, the first appellant bought his piece of land in 1994 from Khamis Nassoro. Thereafter, the first and second appellants constructed their house and started living in. The survey of their land was done while their house was already on the plot of land. Sometimes in 2016, the respondent applied for a permit from the third appellant to renovate and extend her house and she was so granted. Later, the third appellant realised that the respondent was doing construction on the area which was planned to be a road using the building permit issued by the third appellant. In that unlawful extension, the respondent was encroaching towards the plot



which is owned by the first and second appellants. The third appellant also learnt that, the respondent used the building permit granted on her plot to effect unlawful construction on the areas demarcated for the public road. As a result, the third appellant revoked the building permit.

The respondent, thereafter, sued the appellants alleging that the first and second appellants have no ownership over the land they bought in 1994 which was later surveyed in 1998. She further contested the act of the third appellant revoking the building permit. The full trial of the case by the District Land and Housing Tribunal gave right of ownership to the respondent. The trial tribunal went further ordering the third respondent to involve the respondent in case the survey of the land is conducted. The appellant appeared before this Court challenging the decision of the trial tribunal. During the hearing of the appeal, this court noticed some blatant illegalities which could nullify the proceedings of the trial tribunal and the decision thereof. The proceedings of the trial tribunal clearly show that assessors were not involved and no reasons are stated on their absence. The court invited the parties to address the court on this major illegality.

The learned State Attorney, Mr. Athuman Msosole who appeared for the third appellant joined hand with the observation of the court and argued that, the trial tribunal violated **section 23 (1) of the Land Disputes Courts Act, Cap. 216 RE 2019** by not involving the assessors during the hearing of the case. He

explained further that, the trial chairman was supposed to preside over the case with the aid of not less than two assessors. But, in this case, the chairman did not sit with assessors when framing the issues. Also, the hearing of the case commenced in absence of assessors and at page 33, 34 and 35 of the trial tribunal proceedings, there was change of assessors without assigning reasons. He cited an example, the first set of assessors was Fortunata and Muyaga but later changed to Anamary and Bwahama. The replacement of assessors without giving reasons vitiated the proceedings of the trial tribunal. He invited the court to observe the principle of the law stated in the case of **Y.S. Chawalla and Co. LTD v. Dr. Abbas Teherali, Civil Appeal No. 70 of 2017**, CAT at Tanga (unreported). The learned State Attorney urged the court to nullify the proceedings of the trial tribunal.

The first and second appellants who were laypersons had no different observation rather than supporting the professional submission from the learned State Attorney. On the other hand, Mr. Frank Karoli for the respondent also conceded to the illegality on the proceedings of the trial tribunal. Thereafter, there was no rejoinder submission. The court, after hearing the parties, gave an order to allow the appeal, quash the proceedings and decision thereof but reserved the reasons for the decision hence this brief judgment.

In this case, as earlier stated, the court observed some illegalities on the involvement of assessors. For instance, the framing of issues was done in

absence of assessors and no reason is given on their absence. When the case came for the respondent's case, the tribunal commenced hearing in absence of the assessors; again there are no reasons given on the absence of assessors. At page 24 of the proceedings of the trial tribunal, a set of two assessors emerge and they ask questions. In this set, the assessors were Fortunata and Muyaga. While the respondent's case continued, another set of assessors emerged. This time, the assessors were Anamary and Bwahama. At page 49 of the proceedings, the trial chairman recorded the expiry of the tenure of Bwahama and Anamary. At page 57 of the proceedings, the set of assessors of Fortunata and Mugaga came in again who heard all the defence witnesses. However, the proceedings do not show where the last set of assessors was dropped because even their opinions were not solicited by the trial chairman.

In this case, I wish to remind again that, determination of cases under the District Land and Housing Tribunal is governed by the law. The requirement of sitting with assessors cannot be avoided as provided under **section 23 (1) and (2) of the Land Disputes Courts Act, Cap. 216, RE 2019** thus:

"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".

The same requirement is emphasized under **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** 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".

What seems to be the major error in this case is the unwarranted replacement of assessors throughout the trial of the case which under the law vitiated the proceedings of the trial tribunal. On this point, I wish to emphasise the principle of the law stated in the case of **Y.S. Chawalla** (*supra*) where the Court of Appeal of Tanzania when confronted with a similar anomaly had the following observation:

'The replacement offended the clear provision of the law which we have extracted and will alone, suffice to vitiate the trial proceedings of the tribunal.'

Based on the above principle of the law which was violated by the trial tribunal, I hereby allow the appeal, quash the proceedings and set aside the decision of the trial tribunal. I find no reason to order retrial of the case because the land was

surveyed back in 1998, the parties may approach the third respondent for identification of the boundaries. In case, the dispute persists, any interested person may file a fresh suit before a competent forum for determination. As the illegality in this case was occasioned by the trial tribunal, I order no costs. Order accordingly.

Dated at Bukoba this 25th Day of August 2022.





Ntemi N. Kilekamajenga
JUDGE
25/08/2022

Court:

Judgment delivered this 25th August 2022 in the presence of the learned State Attorney, Mr. Athumani Msosole for the third appellant and all the parties were present in person. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
25/08/2022

