

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

AT BUKOBA

LAND APPEAL NO. 79 OF 2021

(Arising from the District Land and Housing Tribunal for Kayunga at Karagwe in Appeal No. 102 of 2017 and original Land Application No. 01 of 2017 at Kitwe Ward Tribunal)

REMIGIUS ZEPHRINE..... APPELLANT

VERSUS

RICHARD EVARIST..... RESPONDENT

JUDGMENT

Date of Judgment: 19.07.2022

A.Y. Mwenda J,

This appeal arises from the judgment and decree of the District Land and Housing Tribunal for Kayunga at Karagwe in **Appeal No. 102 of 2017** which nullified the proceedings and the judgment in Civil Case No. 01 of 2017 of Kitwe Ward Tribunal, dated 22th July 2021. Being dissatisfied by such decision the appellant appealed to this court with four (4) grounds of appeal.

When this appeal was scheduled for hearing the appellant hired the legal services from Mr. Abel Rugambwa learned counsel while the respondent was represented by Mr. Ally Chamani the learned counsel.

Before the hearing of this appeal 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:

When invited to submit on the said anomaly Mr. Rugabwa, the learned counsel for the appellant submitted that section 23 of the Land Dispute Court Act [Cap 216 R.E 2019] requires assessors to give their opinion before the Hon. Chairman reaches a judgment. He submitted that at page 22 of the proceedings, the tribunal recorded assessors' opinion but the said opinions were summarized generally without specifying opinion for each assessor. He said this type of recording of the assessors' opinion is improper and this court and Court of Appeal has already procured the guidelines on how the said opinion should be recorded.

He further submitted that Regulation 19 of the Land Dispute Court (The District Land and Housing Tribunal) Regulation G.N 174 of 2003 directs assessors to give their opinion in Kiswahili and for that matter the District Land and Housing Tribunal proceedings are tainted with irregularities for lack of assessors' opinion and as such the said proceedings should be nullified and the judgment be set aside.

On his part Mr. Chamani the learned counsel for the respondent submitted that since the Hon. Chairman of the District Land and Housing Tribunal omitted to record the opinion of assessors properly then the judgment and the proceedings have no leg to stand. He said the only option is to nullify the proceedings and

any interested party with intention to appeal shall do so subject to the law of limitation. He said if the proceedings are nullified then each party shall bear their own costs.

As stated above, this court noted that the records of the District Land and Housing Tribunal shows that assessors gave their opinion but the Hon. Chairman summarized it. At page 22 of the typed proceedings i.e. on 23/03/2021 when the matter was fixed for assessors' opinion the records show that the Hon. Chairman recorded as follows and I quote:

"The matter comes up for reading assessors opinions, the assessors Mr. Longino and Ms Lukuletia have read their opinions in presence of the appellant, they have opined in favour of the respondent to the effect that he properly proved his case. Having heard the opinions let the date of judgment be fixed.

A closer look at the above summary shows that the opinions of assessor were read to the parties but they were recorded in a summary form. 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
19.07.2022

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
19.07.2022