

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

LAND CASE APPEAL NO. 19 OF 2022

(Originating from Application No. 88 of 2014 of the District Land and Housing Tribunal at Bukoba)

MUGISHA DOMINICK.....APPELLANT

VERSUS

**PERAGIA THADEO (Administratrix of the estate of
the late Thadeo Mbogo).....RESPONDENT**

JUDGMENT

1st September & 5th September 2022

Kilekamajenga, J.

The late Thadeo Mbogo, before his death, was married to the mother of the respondent and they lived on the disputed land which is located at Nshamba Buganguzi within Muleba District. Later, the mother of the respondent died and Thadeo Mbogo married another woman called Paskazia and they continued to live on the disputed land. Paskazia also invited her daughter who came with the appellant and they lived on the disputed land. By that time, the appellant was just eight years old. In 1992, Thadeo Mbaga died and he was survived with a widow (Paskazia) and children including the respondent. However, after the death of Thadeo Mbaga, his estate was not distributed on the reason that, the same could, at least, maintain the surviving widow (Paskazia).



In 2011, Paskazia also died and the respondent, being aware that the estate could revert back to the lawful heirs, applied for the administration of estate at Nshamba Primary Court vide Probate and Administration cause No. 17 of 2011. Her application was objected by the appellant alleging that the estate was distributed under the administration of the Village Executive Officer. In that distribution, the appellant alleged to have been allocated the disputed land. However, the Primary Court appointed the respondent as the administratrix of the estate. The appellant appealed to the District Court vide Civil Appeal No. 7 of 2012 where he again lost the case. Still dissatisfied, the appellant appealed to this court vide Probate and Administration No. 03 of 2014 which was decided in favour of the respondent. Thereafter, the respondent went back to administer the estate but she met another snag, that the appellant was still holding the deceased's estate. The respondent sought an order of vacant possession against the appellant in the District Land and Housing Tribunal at Bukoba vide application No. 88 of 2014. The application was decided in favour of the respondent and the trial tribunal ordered the appellant to vacate from the suit land. The appellant appealed to this court through the instant appeal.

The appellant coined two grounds of appeal to challenge the decision of the District Land and Housing Tribunal thus:

- 1. That the trial tribunal erred in law for not involving the assessors according to the requirement of the law;*



2. That the evidence of the appellant was not properly tested with the evidence of the respondent which lacked the root of ownership by the late Thadeo Mbogo.

This court also perused the proceedings of the trial tribunal and noticed that the tribunal failed to properly involve the assessors nor consider their opinion in the judgment. Being aware that this anomaly might have vitiated the proceedings and decision thereof, I invited the parties to address the court on these anomalies. The parties who were lay persons had no different observation than support the observation of the court and urged the court to order retrial of the case.

Therefore, in determination of the instant appeal, I will consider the first ground of appeal which indicated that the trial tribunal failed to involve the assessors. It is evident that, the perusal of the trial tribunal proceedings shows that, when the case came for framing of issues on 19th August 2014, the assessors were absent but the tribunal proceeded to frame the issues. I should set it clear that, the framing of the issues is part of the hearing of the case. For that reason therefore, in this case, the hearing of the case commenced when the trial tribunal was not full constituted because issues were framed while the assessors were absent. For that reason, the framing of issues was done in violation of

section 23(1)(2) of the Land Disputes Courts Act, Cap. 216 RE 2019

which provides that:

"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 hearing of the applicant's case commenced on 20th May 2020 and the assessors were Anamery Mutajwaa and Jenestina Lugakingira. On 25th February 2021, the tribunal scheduled the case for assessors opinion but, the record does not show whether the assessors gave their opinions something which violated **Regulation 19 (1) and (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** which 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".



The requirement of recording the assessors' opinion was emphasized in case of **Ameir Mbarak and Azania Bank Corp. Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015 (unreported)** that:

"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."

The further perusal shows that the assessors seemed to have chronicled their opinions on paper and filed them in the tribunal. But, the record is silent on whether such opinion were read to the parties. The judgment is also silent on whether the tribunal chairman ever considered such opinion as provided under **section 24 of the Land Disputes Courts Act** thus:

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


I find these to be anomalies which violated the requirement of the law and therefore vitiated the proceedings and decision of the trial tribunal. I hereby allow the appeal, quash the proceedings of the trial tribunal and set aside the decision thereof. Due to the fact that, the dispute has been pending in court



since 2011, I hereby order the immediate retrial of the case before the District Land and Housing Tribunal. The trial tribunal should give priority to this dispute as it is too old. No order as to costs. It is so ordered.

Dated at Bukoba this 5th Day of September 2022




Ntemi N. Kilekamajenga
JUDGE
05/09/2022

Court:

Judgment delivered this 05th September 2022 in the presence of the respondent but in the absence of the appellant. No order as to costs. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
05/09/2022.

