

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

**LAND CASE APPEAL NO. 8 OF 2021**

(Arising from District Land and Housing Tribunal for Kondoa in Application No. 46 of  
2017)

**CHICKNOS FREDRICK FURIA**

**NDESUO MASSAWE MBISHI..... APPELLANT**

**VERSUS**

**1. PETER SIMON SHAURI**

**2. THE DODOMA MUNICIPAL COUNCIL**

} ... RESPONDENTS

*1/8/2022 & 22/8/2022*

**JUDGMENT**

**MASAJU, J**

The Appellant, Chicknos Fredrick Furia Ndesuo Massawe Mbishi, unsuccessfully sued the Respondent, Peter Simon Shauri and the Dodoma Municipal Council, in the District Land and Housing Tribunal for Dodoma at Dodoma. Aggrieved by the decision, the Appellant has come to the Court by way of an appeal.

The Appellant's Petition of Appeal is made up of five (5) grounds of appeal one of them being, thus;

*"4. That, the trial Chairman erred in law and in facts in not giving Assessors the chance to read their opinion to the parties."*

When the appeal was heard in the Court on the 1<sup>st</sup> day of August, 2022 the Appellant was represented by Mr. Paul Nyangarika, the learned counsel while the Respondents were represented by Ms. Hellen Njowoka, the learned State Attorney.

The Appellant argued on the 4<sup>th</sup> ground of appeal that upon the defence's closure of their case, the trial Chairman ordered the judgment thereof would be on the 14<sup>th</sup> day of September, 2020 and that the assessors to opine. That, the record of proceedings does not reveal that the assessors, if any, did give their opinion in the presence of the parties contrary to Regulation 19(2) of the Land Disputes Courts Act [The District Land and Housing Tribunal] Regulations 2003 read together with section 23 (1) (2) of the Land Disputes Courts Act, [Cap 216].

The Appellant finalized his submissions by arguing that the remedy thereof is to nullify the proceedings and order trial '*de novo*'.

The Respondents on their part conceded to the 4<sup>th</sup> ground of appeal and the remedy thereof.

The Court appreciates the submissions by the parties in support of the appeal. Indeed, Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides, thus;

*" 19 (2) Not Withstanding subregulation (i) the Chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Swahili"*

Also, section 23(2) of the Land Disputes Courts act [Cap 216] provides, thus;

*"23 (2) The District Land and Housing Tribunal shall be duly 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 two above provisions of law give a mandatory requirement of the assessors to give their opinion in presence of the parties and the opinion to be also reduced into writing. In the instant case the two requirements were not fulfilled.

The importance of assessors opinions was well illustrated in **Tubone Mwambeta V. Mseya City Council (CAT) Civil Appeal No. 287 of 2017, Mbeya Registry**, thus;

*"..... since Regulation 19 (2) of the Regulation requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing such opinion must be available in the presence of 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 record of proceedings of the trial Tribunal reveals that after the defence case was closed, the trial Tribunal ordered the assessors to opine but the record is silent on whether the assessors' opinion were read as required by the law.

The Court has also noted that there was change of assessors with no reasons thereof. When the prosecutions case was opened on the 28<sup>th</sup> day of February, 2018 the assessors present were L. Mwaibale and J. Magembe who sat throughout the prosecutions case. The defence case was opened on the 16<sup>th</sup> day of May, 2019 where the assessors who sat at the trial Tribunal were J. Magembe and E. Kabohola who sat during the testimony by Nestory

Likombe (DW1). But during the testimony by Mashaka Roden Mwenda (DW2) and Ally Yusuph Bella (DW3) the assessors who sat were J. Magembe and F. Mwedipando. The record of proceedings also reveals that only one assessor gave out her opinion in writing. That is Jane Magembe. This is contrary to section 23 of the Land disputes Courts Act [Cap 216] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunals) Regulations, 2003.

That said, the procedural irregularities by the trial Tribunal can not be cured by section 45 of the Land Disputes Courts Act [Cap 216] for it occasioned failure of justice. Thus, by virtue of Revisionary powers of this Court under section 43 (1) (b) of the Land Disputes Court Act [Cap 216] the trial of this matter in the District Land and Housing Tribunal for Dodoma at Dodoma is hereby declared a nullity along with the proceedings, judgment, decree and orders which are hereby quashed and set aside accordingly.

The Court orders for trial of the land dispute, if any, '*de novo*' before the court of competent jurisdiction.



  
GEORGE M. MASAJU

**JUDGE**

22/8/2022