

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

MISC. LAND CASE APPEAL NO. 42 OF 2020

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 80 of 2019)

ADVERA PROTASE BAKUZA..... APPELLANT
(Administratrix of the estate of Aurelia Philipo)

VERSUS

PASCRATES PONSIAN KWEYAMBA..... RESPONDENT

JUDGMENT

Date of Judgment: 19.08.2022

A.Y. Mwenda J,

The appellant filed this appeal challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 80 of 2019. In that matter the respondent who stood as the applicant was ordered to meet with other clan members in order to decide who among themselves is to take over the suit land as the suit land is still the property of Abakyaija clan.

Aggrieved by the said decision he preferred the present appeal with seven (7) grounds. Before hearing of this appeal commenced this court discovered anomaly with the District Land and Housing Tribunal records. The said anomaly is in respect of lack of assessors' opinion. As such during hearing, the court directed the counsel for the parties to submit in that respect.

Given the floor to submit Mr. Rweyemamu the learned counsel for the respondent was quick to inform this court that having perused the trial proceedings especially page 42 he noted that the trial tribunal record that assessors' opinions were read to the parties. However, the said opinion is not in the record. For that reason, the learned counsel said that the wholly proceedings of District Land and Housing Tribunal is nullity and as such he beseeched this court to order trial de novo.

On his part Mr. Dastan Mujaki the learned counsel appellant did not have much to say other than joining hands with Mr. Rweyemamu's prayer that the order for trial de novo be issued.

I have revisited the records and as was rightly submitted by Mr. Rweyemamu the trial Tribunal's proceedings are tainted with illegality. At page 42 of the proceedings the Hon. Chairman put it in record that assessors' opinion was read to the parties. However, the said opinion is not featuring in the records. Section 23 (1) and (2) of the Land Dispute Court's Act states in a mandatory term regarding composition of the tribunal and the duty of assessors. This section states as follows;

Ss (1) "The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors"

*Ss (2) The District Land and Housing Tribunal shall be duly constituted when held by a chairman and **two assessors who shall be require to give out their opinion before the Chairman reaches the judgment.**" [Emphasis supplied]*

Faced with a similar scenario, the Court of Appeal in the case of SIKUZANI SAID MAGAMBO & ANOTHER VS MOHAMED ROBLE CIVIL APPEAL NO. 197 OF 2018 (unreported), having reproduced section 23(1) and (2) of the Land Dispute Courts Act added that and I quote;

"In addition, Regulation 19 (1) and (2) of the Regulations impose a duty on a chairperson to require every assessor present at the conclusion of the trial of the suit to give his or her opinion in writing before making his final judgment on the matter".

Regarding consequences for failure to comply with the above provision the Court in the case of SIKUZANI MAGAMBA SUPRA WHILE CITING AMEIR MBARAKA AND AZANIA BANK CORP. LTD VS EDGAR KAHWILI CIVIL APPEAL NO. 154 OF 2015 held that;

*"Therefore, in our own considered view, **it is unsafe to assume the opinion of the assessor which is not on the records by merely reading the***

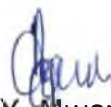
acknowledgement of the chairman in the judgment. In the circumstances, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity." [Emphasis added]

In the present appeal therefore, since the Hon Chairman did not record the opinion of assessors it is therefore considered that no opinion of assessors was availed and read in the presence of the parties before the judgment was composed 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. I order that if the parties are still interested to pursue their rights, an expedited fresh hearing before another chairman and new set of assessors be commenced. Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda
Judge

19.08.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Dastan Mujaki the learned counsel for the Appellant and in the presence of Mr. Mathias Rweyemamu the learned counsel for the Respondent.




A.Y. Mwenda

Judge

19.08.2022