

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

MISC. LAND APPEAL NO. 85 OF 2021

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Appeal No. 44 of 2019 and original Civil Case No. 23 of 2018 at Bugandika Ward Tribunal)

JULIUS JOSEPH..... APPELLANT

VERSUS

ADELINA GASPARE..... RESPONDENT

JUDGMENT

Date of Judgment: 19.08.2022

A.Y. Mwenda J,

The appellant (Mr. Julius) has filed this appeal challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 44 of 2019. The said appeal was dismissed with cost for lack of merits.

Being dissatisfied by such a decision he appealed to this court with four (4) grounds of appeal which reads as follows and I quote;

- 1) That the trial tribunal erred in law to allow the evidence of a person of tender age to pass and remain part of original records. (sic)
- 2) That the trial tribunal erred in law to bring up an issue of composition of members at ward tribunal which was never contested at by parties.

- 3) That the trial tribunal erred in law to ignore emerged fact that the ward tribunal judgment composed of members whom by then were not already in office.
- 4) That the trial tribunal erred in law to ignore the fact that Adinani Amri (vendor) had in appeal no 98 of 2017 (arising from Bugandika Ward Tribunal Land Case No. 32 of 2017) admitted thus the Suitland never belong to him. (sic)

When this appeal was scheduled for hearing the appellant was represented by Mr. Joseph Bitakwate the learned counsel while the respondent appeared in person without legal representation.

During his submission in chief Mr. Bitakwate informed the court that, he abandons the 1st and 4th ground of appeal and remaining with the 2nd and 3rd grounds which he was going to argue them collectively.

In his submission Mr. Bitakwate said that during the hearing of Civil Case No. 23 of 2018 at Bugandika Ward Tribunal the record does not show if there are members who participated during the hearing. He submitted that at page 1 of the Ward Tribunal proceedings on 31/7/2018, the coram does not indicate the members who were involved during the hearing. He said this is contrary to section 11 of the Land Dispute Courts Act [Cap 216 R.E 2019] which requires the Ward Tribunal to sit with not less than 4 and not more than 8 members.

The learned counsel submitted further that on 23/4/2019 when the judgment was pronounced the coram shows that four (4) members were listed and according to him this does not mean they were involved during the hearing of the case. He further submitted that records do not show if members asked questions to the parties. He however stated that the records shows that witnesses asked questions but the names of those who asked were not recorded. He said this was fatal and to support his submissions, he cited the case of **AWINIEL MTUI & 3 OTHERS VS STANELY EPHATA KIMAMBO (ATTORNEY FOR EPHATA MATHAYO KIMAMBO) CIVIL APPEAL NO. 97 OF 2018.**

The learned counsel further submitted that in the proceedings of the District Land and Housing Tribunal in Appeal No. 44 of 2019, assessors were not involved and did not opine as per the requirement of the law. He submitted that in the typed proceedings i.e. on 15/10/2019 the day which was set for assessors opinion, the coram does not show if the assessors participated and their opinion read to the parties. He also submitted that the assessors' opinions are reflected in the Tribunal judgment as shown from page 7 to 10 of the judgment while proceedings are silent in that regard which is not proper. To support his arguments, he cited the case **OF EDNA ADAM KIBONA VS ABSALOM SWEBE (SHELI) CIVIL APPEAL NO. 286 OF 2017 CAT (unreported).**

He concluded his submission by stating that the whole decisions of the Ward and the District Land and Housing Tribunal are tainted with illegality and as

such they should be nullified by invoking revisional power under section 43(1) (b) of the Land Dispute Court Act [Cap 216 R.E 2019].

In reply to the submissions by the learned counsel for the appellant, the respondent submitted that before the ward tribunal members participated in the whole proceedings and also visited the locus in quo. With regard to illegality to the proceedings of the District Land and Housing Tribunal, she submitted that she is a lay person, she cannot know what the Hon. Chairman and his team recorded. She thus concluded by submitting that the present appeal has no merits and should thus be dismissed.

Having gone through the tribunal's records as well as parties submissions, the records are clear that the Ward and District Tribunal's proceedings are tainted with irregularity for lack of assessors opinion and the improper composition of members. The records of the District Land and Housing Tribunal do not reflect if the assessors gave their opinions as required by the Law. At page 8 of the typed proceedings i.e. on 15/10/2019 when the matter was fixed for assessors' opinion the records show that the Hon. Chairman recorded as follows and I quote;

*"Tribunal: The matter is coming for hearing
assessors' opinion.*

Parties: We are read.

Tribunal: Opinion read to the parties

Order: Judgment on 17. 10.2019."

A closer look at the above summary shows that the opinions of assessors were read to the parties, however the same was not recorded. 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 the proceedings. 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 of assessors 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.

With regard to the composition of the Ward Tribunal, section 11 of the Land Dispute Court Act [Cap. 216 R.E 2019] state that the Ward Tribunal is properly constituted when it consists of not less than four and not more than eight members.

In that regard the composition of the Ward Tribunal should be observed properly before the hearing of any matter commences. In our present appeal the records of ward tribunal are silent in that regard. At page 1. of the tribunal's handwritten proceedings i.e. on 31/07/2018 the coram shows as follows and I quote;

Mdai: Adelina Gaspare

Mdaiwa: Julius Joseph

From there the tribunal proceed by recording the evidence of the complainant who is Adelina Gaspare. In the case of MARIAM MADALI VS. HADIJA KIHEMBA HIGH COURT OF TANZANIA MISC. LAND CASE APPEAL NO. 16 OF 2019 (Dar es salaam Registry) it was stated that the composition of members has to be recorded each day failure to do so, it becomes difficult to know which member fully participated in the proceedings. In this case it was held inter alia that;

"Composition of the tribunal concerns its existence because a tribunal which is not well composed is as good as is a non - existing of tribunal"

Guided by the above position of law since this Appeal No. 44 of 2019 emanates from Civil Case No.23 of 2018 which is tainted with illegality then automatically the said appeal lacks no legs to stand on. By invoking the revisional powers under section 43 (1) (b) of the Land Dispute Court Act [Cap 216 R.E 216] this court nullified the proceedings in Civil Case No. 23 of 2018 of the Bugandika Ward Tribunal.

This appeal therefore succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal in Appeal No. 44 of 2019 and Civil Case No. 23 of 2018 at Bugandika Ward Tribunal. For that matter any order emanating therefrom is set aside. 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. Joseph Bitakwate the learned counsel for the Appellant and in the presence of Ms. Adelina Gaspare the Respondent.




A.Y. Mwenda

Judge

19.08.2022