

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

**AT BUKOBA**

**LAND APPEAL NO. 21 OF 2022**

*(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Land Appeal No. 115 of 2020 and original Civil Case No. 31 of 2020 at Nyakato Ward Tribunal)*

**REVINA ARCHARD..... APPELLANT**

**VERSUS**

**AURELIA BAKOLA..... RESPONDENT**

**JUDGMENT**

*Date of Judgment: 02.09.2022*

*A.Y. Mwenda J,*

Ms. Revina Archard (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 21 of 2022, preferred this appeal with four (4) grounds. In that matter the appellant (now the respondent) was declared the rightful owner of the Suit Land and the decision in Nyakato Ward Tribunal in Civil Case No. 31 of 2020 was quashed and set aside.

Before hearing of this appeal commenced this court discovered anomaly with the proceedings of the District Land and Housing Tribunal. The said anomaly is in respect of lack of assessors' opinion.

When this matter was scheduled for hearing on 11<sup>th</sup> July 2022 the appellant prayed this appeal to be disposed by the way of written submissions a prayer

which was not opposed by the respondent. This prayer was then granted by the court and the parties complied with the scheduling orders. In addition, the court ordered to prepare their submissions only in regard to illegality pointed above as it capable of vitiating the whole proceedings.

In his written submissions the appellant although he was directed to submit in respect of the anomaly regarding assessors' opinion, he opted to submit on all grounds of appeal. This court decided not to dwell on them since they have no effect of assisting in determining the outcomes of anomaly raised above.

On his part the respondent submitted that during trial before the District Land and Housing Tribunal the Hon. Chairman sat with the aid of two assessors who participated fully from the commencement of the hearing until the pronouncement of the judgment as per the requirement of the law under section 23(1) & (2) of the Land Dispute Court Act [Cap 216 R.E 2019] Regulation 19 (1) & (2) of the Land Dispute Court Act (The District Land and Housing Tribunal) Regulation G.N 174 of 2003.

He further submitted that when the defense case was closed the Hon. Chairman did not require assessors to give their opinion as required by the law. He submitted that assessor's opinions are not reflected on the tribunal's proceedings although they are seen at the tribunal's judgment. He said this is contrary to the law and prayed this appeal to be dismissed with costs.

I have revisited the records and as was rightly submitted by the respondent, the trial Tribunal's proceeding is tainted with illegality. At page 8 of the proceeding the Hon. Chairman put it on record that assessors' opinion read to the parties. However, the said opinion is not featuring (reflected) in the records. Section 23 (1) and (2) of the Land Dispute Court's Act provide in a mandatory term the importance of observing the composition of the tribunal and the duty of assessors. This section states as follows;

S. 23 (1) "The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors

(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.**" [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 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. In other words, it is as if there were no assessors who were in attendance and as

such it cannot be said that the tribunal was properly constituted and as such the whole proceedings of the District Land and Housing Tribunal is a nullity.

From the foregoing observations, 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 interested to pursue his/her rights may prefer a fresh suit before a competent tribunal. Each party shall bear its own costs.


It is so ordered.



  
A.Y. Mwenda  
**Judge**  
02.09.2022

Judgment delivered in chamber under the seal of this court in the presence of Ms Revina Archard the Appellant and in the presence of Ms Aurelia Richard the Respondent.



  
A.Y. Mwenda  
**Judge**  
02.09.2022