

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

AT BUKOBA

LAND APPEAL NO. 13 OF 2022

*(Arising from District Land and Housing Tribunal for Kayunga at Karagwe in Application No. 5/2016 and
Land Application No. 11/2015)*

JONASPON NAKUSHA.....APPELLANT

VERSUS

ELIZEUS LUSHAMBIRA.....RESPONDENT

JUDGMENT

Date of Judgment: 02.09.2022
A.Y. Mwenda, J.

Before the District Land and Housing Tribunal for Karagwe at Karagwe the respondent hereinabove sued the appellant and craved to be declared as the lawful owner of the suit premises and that the respondent, (now the appellant) be ordered to pay damages of TZS. 2 Million, exemplary damages of TZS. 1 Million and mense profit of TZS. 3 Million.

Having heard the evidence adduced by both parties, the trial tribunal dismissed the application with costs.

Aggrieved by the said decision, the appellant preferred the present appeal with the following grounds to wit;

1. That, the tribunal erred in law and fact by providing ambiguous judgment, for failure to deal with framed issues extensively.
2. That, the tribunal grossly erred in law and fact by entertaining extraneous matters not associated with matter in dispute.
3. That, the tribunal grossly erred in law and fact for failure to declare the Appellant the lawful owner of the disputed land, despite the decision in his favour. (sic)
4. That, the tribunal erred in law and fact for failure to consider opinion of assessors hence having erroneous judgment.

When this matter was called on for hearing, both parties appeared in person without any legal representation. Having gone through grounds of appeal it was agreed by the parties that, their submission should only focus on the issue of opinion assessors (as appearing in the 4th ground of appeal) as the same is capable of disposing this appeal.

When given opportunity to submit in respect of the said point, the appellant informed the court that there were no opinion of assessors which was read to them. He concluded his submissions praying the court to allow this appeal.

On his part, the respondent also submitted that assessors did not give their opinion. He prayed the court to weigh this issue and issue a judgment in accordance to the law.

From the foregoing submission, the issue is whether or not the present appeal is merited. As I have stated earlier one of the grounds of appeal (4th ground) challenges the involvement of assessors in the proceedings in that their opinions were not considered.

From the records, when the hearing of the matter came to an end by visiting the Locus in quo, the judgment date was fixed to 7/11/2018. This was before the assessors gave their opinion.

On the 7/11/2018 the judgment was not read but adjourned to 30/11/2018. On 30/11/2018 the records reads as follows that;

"Tribunal: the parties are present the matter is for judgment, no opinion, so we adjourn."

Again the tribunal adjourned and fixed the matter to 25/1/2019 for judgment. On 25/01/2019 the judgment was not read and since then, the matter went through a number of adjournments until the 14/03/2019 when the records reads;

"Mr. Adabart: for applicant, the respondent is present. The matter is for judgment we do not have the opinion of assessors yet, so I adjourn."

Sgd: R.E Assey

Chairman

14.03.2019

***Order: Judgment on 17/04/2019. The parties
to attend assessors to opine."***

Sgd: R.E Assey

Chairman

14.03.2019

On 17/04/2019 the judgment was read. However the record does not show if the opinions by assessors were read before. This is contrary to section 23(1) and (2) of the Land Dispute Courts Act, [Cap 216 RE 2019]. Under this section the Tribunal is said to be properly constituted if it is composed of a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.

In the cause of the hearing, the chairman is bound to require the assessors present to give their opinion. In the case of TUBONE MWAMBETA V. MBEYA CITY COUNCIL, CIVIL APPEAL NO. 287 OF 2017, CAT (unreported) the court held;

"Moreover, a duty is imposed on the chairman under Reg. 19(2) of the Land Disputed Courts (The District Land and Housing Tribunal) Regulations, 2003 which provides the:

"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 his opinion in Kiswahili."

Faced with similar scenario, thus court (Kilekamajenga, J) in the case of REV. PETER BENJAMIN VS. TUMAINI MTAZAMBA @ MWEMA, LAND APPEAL NO. 69 OF 2019, (unreported) while citing the case of TUBONE MWAMBETA (supra) held inter alia that;

"...the involvement of assessors is crucial in adjudication of land disputes because apart from constituting the tribunal, it embraces giving opinion before the determination of the dispute. As such, their opinion must be on record"

Regarding the consequence for failure to receive and record the opinion of assessors, this court went further to state 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."

In the same footing, since in the present matter, the assessors did not give their opinion, it is as good as they were not fully involved and the whole proceedings becomes a nullity. That being the case, this appeal therefore succeeds. The

proceedings of the District Land and Housing Tribunal is nullified and the judgment and any order emanating therefrom is set aside. Any party wishing to pursue his rights may do so by instituting a fresh suit before the competent Tribunal. As regard to costs, since the anomaly leading to the present outcome was caused by the 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 Mr. Jonaspon Nakusha the appellant and in the presence of the respondent Mr. Elizius Lushambira.


A.Y. Mwenda
Judge
02.09.2022

