

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

LAND CASE APPEAL NO. 81 OF 2021

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Application No: 09 of 2018)

KABYEMELA MWIJAGE KATUNDUAPPELLANT

VERSUS

ALISTIDES LEONARD 1ST RESPONDENT

RUMANYIKA SUPERI JOSEPH2ND RESPONDENT

MTAYA SUPERI JOSEPH3RD RESPONDENT

ZIDOLA JOSEPH4TH RESPONDENT

JUDGMENT

Date of Judgment: 23.09.2022

A.Y. Mwenda J,

The appellant filed this appeal challenging the decision of the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 09 of 2018. In that matter the trial Chairman dismissed the application with cost for lack of merits and the first respondent was declared the rightful owner of the suit land.

Aggrieved by the said decision he preferred the present appeal with seven (4) grounds. For the sake of what I shall state later, I am not going to reproduce them.

When this matter was scheduled for hearing both parties appeared in person without legal representation.

Before hearing of this appeal commenced this court discovered an anomaly with the District Land and Housing Tribunal's records. The said anomaly is in respect of lack of assessors' opinion. As such during hearing, the court directed the parties to submit in that respect only.

Given the floor to submit in regard to the raised illegality Mr. Kyabemera, the appellant submitted that the opinion of assessors was not properly recorded and he prayed the present appeal to be allowed.

In responding to the raised illegality, the 1st respondent submitted that he recalls that on the day fixed for assessors' opinion, one of the assessors who is Mzee Marijani was not present before the tribunal but the Hon. Chairman read his written opinion to the parties because his term of service expired. He said Mzee Mutalemwa was also present and he read his opinion. The 2nd respondent had nothing to submit other than joining hands with 1st respondent. They prayed this appeal to be dismissed.

In rejoinder Mr. Kabyemela submitted that if Mzee Marijani term of service expired then how comes his opinion become valid. He also submitted that he wonders why the Hon. Chairman could read the opinion on behalf of the said assessors. He thus prayed this appeal to be allowed.

As stated above, this court noted that the Hon. Chairman failed to record the opinion of each assessor as required by the Law. At page 50 of the typed

proceedings i.e. on 29/07/2021 when the matter was fixed for assessors' opinion the records show the Hon. Chairman recorded as follows and I quote:

"Baraza: Shauri limekuja kwajili ya kusoma maoni ya wezee wa Baraza. Maoni ya wazee yamesomwa na Mzee Mutalemwa mbele ya wadaawa. Wote kwa Pamoja wametoa maoni kuwa Maombi haya yafukuzwe kwa sababu mleta maombi ameshindwa kuthibitisha dai lake."

A closer look at the above summary shows that the opinion of assessor was recorded in violation of law. The way it looks is like the opinion on by both assessors was read by one Mzee Mutalemwa. The same is summarized in a way it just highlights each one's conclusion. Legally speaking this was not proper. 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 Hon. Chairman in making his findings. In other words, each of the assessor's opinion have to be recorded in the way that particular assessor articulated it. 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 record the opinion 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. This appeal therefore succeeds to the extent of nullifying the proceedings of the District Land and Housing Tribunal and the judgment and any orders emanating therefrom are set aside. If the appellant

still wishes to pursue his rights, he can do so before a competent tribunal.
Otherwise, there is no order as to costs.

It is so ordered.




A.Y. Mwenda

Judge

23.09.2022

Judgment delivered in chamber under the seal of this court in the presence of
Mr. Kabyemela Mwijage the Appellant and in the presence of the 1st and 2nd
Respondents.




A.Y. Mwenda

Judge

23.09.2022