

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

**LAND APPEAL NO. 11 OF 2022**

*(Arising from the High Court of Tanzania (Bukoba District Registry) in Misc. Land Application No. 115 of 2021  
Original Application No. 156 of 2007 from the District Land and Housing Tribunal for Kagera at Bukoba)*

**VEDASTO PROTACE.....APPELLANT**  
*(Administrator of estates of the Protace Nchwampaka)*

**VERSUS**

**JOHN JOSEPH MUGANGO.....RESPONDENT**  
*(Administrator of estates of the late Joseph Helman)*

**JUDGMENT**

*Date of Judgment: 21.09.2022*

*A.Y. Mwenda J,*

This appeal arises from the judgment and decree of the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 156 of 2007. In the said application the Hon. Chairman declared the respondent (then the applicant) lawful owner of the suit shamba and the appellant (then the respondent) was ordered to give vacant possession. Being dissatisfied by such decision the appellant appealed to this court with four (4) grounds.

When this appeal was scheduled for hearing the respondent hired the legal services from Mr. Frank Karoli, learned counsel while the appellant appeared in person without legal representation.

On the date when the hearing of this appeal was fixed, i.e. on 07<sup>th</sup> August 2022, the appellant prayed before this court to argue the appeal by the way of written submissions. The respondent did not protest the said prayer thus the scheduling order was fixed where the parties complied accordingly.

In the process of preparing the judgment, this court, noted irregularity in the proceedings of the District Land and Housing Tribunal regarding lack of assessors' opinion. Since this was not one of the grounds of appeal, this court re opened the proceedings and parties were then invited to submit only in that regard because the said irregularity had the effect of vitiating the whole proceedings.

In his submissions, Mr. Frank Karoli submitted that the judgment was pronounced without involvement of assessors. He said this made the whole proceedings a nullity. He thus prayed the judgment and any orders emanating therefrom to be set aside and each party to bear its own costs.

On his part, the respondent submitted that it is true that assessors did not give out their opinion. He then prayed the proceedings to be nullified and his appeal to be allowed with costs.

As I have stated earlier the trial Tribunal's proceedings are tainted with illegality. At page 37 of the proceedings the Hon. Chairman put it on record that ***"Judgment on 15.10.2009. Assessors shall give out their opinion"*** However, from that date the records are silent as to whether assessors gave

out their opinions before the tribunal. The said opinion is however reflected in the Tribunal's judgment at page 7 where the Hon. Chairman recorded as follows and I quote;

***"The tribunal assessors who sat with me opined that the applicant be entitled to TZS 339,000/= as proved by the assessment report."***

From what the Hon. Chairman recorded, it is apparent that the assessors did not give out their opinion. That being the case, it is as if they were not a party to the tribunal thus the tribunal was not properly constituted. Emphasis in observing the composition of the tribunal and the assessor's involvement in giving out their opinion is the creature of law/statute i.e. section 23 (1) and (2) of the Land Dispute Court Act. This section reads 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 require to give out their opinion before the Chairman reaches the judgment.**" [Emphasis supplied]*

In a bid to emphasize the urge of complying to section 23 (1) and (2) of the Land Dispute Court Act [CAP 216 R.E 2019], 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 held (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".*

In present matter, the omission to record the assessors in the proceedings, and instead acknowledging the same in the copy of judgment it is fatal because it is not known when exactly did that opinion penetrate into the record.

Regarding consequences for failure to comply with the above provisions of the law, 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 failed to record the opinion of assessors, it is therefore as if the assessors were not involved at all, thus the tribunal was not properly constituted. Consequently, 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 District Land and Housing Tribunal and judgment and any order emanating therefrom in Application No. 156 of 2007 are hereby set aside. I also order trial de novo in case the respondent is still interested to pursue his rights. Each party shall bear its own costs.

It is so ordered.



*A.Y. Mwenda*  
A.Y. Mwenda

**Judge**

21.09.2022

This judgment is delivered in chamber under the seal of this court in the presence of Mr. Vedasto Protace the appellant and in the presence of Mr. Frank Karoli the learned counsel for the respondent.



  
A.Y. Mwenda

**Judge**

21.09.202