

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOB A DISTRICT REGISTRY**

**AT BUKOB A**

**LAND CASE APPEAL NO. 40 OF 2022**

*(Originating from the Land Application No. 40 of 2021 of Karagwe District Land and Housing Tribunal)*

**PHILBERT MALANGILWA ----- 1<sup>ST</sup> APPELLANT**

**THOMSON MALANGILWA-----2<sup>ND</sup> APPELLANT**

**VERSUS**

**EVALISTA MALANGILWA----- RESPONDENT**

**JUDGMENT**

**27/09/2022 & 29/09/2022**

**Isaya, J.**

In the District Land and Housing Tribunal of Karagwe, the Respondent sued the Appellants over the Suitland which is situated at Chanya Village, Kyerwa District in Land Application No. 40 of 2021.

Briefly, this is a battle between the father (Respondent) and his sons (Appellants). The parties are battling of the land which the respondent is claiming that the Appellants too as their inheritance while he is still alive. All the end, the tribunal decided in favour of the Respondent. Aggrieved with the findings and judgment of the trial tribunal, the Appellants appealed against both the judgment and decree, their grounds of appeal boil in the following seven point: -

*"1. That the learned chairman of the District Land and Housing Tribunal grossly erred in law for rewarding victory to the respondent who never proved his case; taking into*



*account that neither his pleadings nor his testimonies specifically described the size of the Suitland he claimed;*

*2. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law, for dragging the respondents into unfair hearing before complying with mandatory regulations of the Land Disputes (the District Court and Housing Tribunal) Regulation, GN. 174 2003;*

*3. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law and in fact by intruding and relying on his own extraneous matter never pleaded by parties or testified by them during hearing.*

*4. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law for being biased and gave a one-sided judgment having obviously shifted the burden of proof to the appellants, against the law and practice of the land;*

*5. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law and fact for giving a contradictory reasoning in the judgment which could make him reach the decision he reached.*

*6. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law and fact for departing to assessors' opinion without assigning valid legal reasons for departure;*



*7. That, the learned chairman of the District Land and Housing Tribunal grossly erred in law when allowed reading of assessor's opinion in absence of the applicants"*

The respondent resisted all the ground of appeal.

When the appeal was called on the hearing, the Appellants were represented by Mr. Dickson Laurent, Advocate, while the Respondent was represented by the Ms. Erieth Barnabas, Advocate.

At the outset, Ms. Erieth informed this court that upon going through the records, she discovered a fatal irregularity at page 40 of the typed proceedings, that the coram did not show the presence of assessors by stating their name as required. Again, at page 41 the opinions of assessors are not shown or recorded. She cited the case of **Hosea Andrea (Administrator of the estate of Late Hossea Mshanga) Vs. Charles Gabagambi**, Land Case Appeal No. 66 of 2021 High Court at Bukoba, in which the court insisted that the opinions of assessors should be recorded and should be shown in the coram by writing their names.

Likely, the learned advocates had brainstormed on the irregularity in the record because Mr. Dickson, Advocate, on his part readily conceded on the submission and had nothing to submit on the ground since the irregularity so far noted is capable of disposing the whole matter. He however reminded the court that in situations like this one when the proceedings and judgment are declared a nullity, the parties bear their own costs.

As rightly submitted and conceded by both parties it is a glaring irregularity in the records of the trial tribunal that the opinions of assessors were not recorded and the coram of 20/01/2022 did not include the assessors.

Under Section 23 (2) of the Land Disputes Court Act, Cap 216, it read:



*"The District and Housing Tribunal shall be constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment"*

Again, in the Case of **Tubone Mwambeta Vs. Mbeya City Council** Civil Appeal No. 287 of 2017, CAT (unreported) it was stated as follows:

*"... 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"*

In Land **Case Appeal No. 23 of 2020 Aloysius Benedicto Rutaihwa Vs. Emmanuel Bakundukize Kendurumo & 9 Others**, High Court at Bukoba, Kilekamajenga, I confronted with the same situation breathed the following words at page 8 of the judgment.

*"The presence of assessors is not a ceremonial procedure but their participation must be reflected at all levels of the trial which include giving opinion before delivering the judgment."*

Yet, the **Court of Appeal in Amer Mbarak and Kahwili**, Civil Appeal No. 154 of 2015 (unreported) where the court stated:

*"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessors which is not on record by merely reading the acknowledgment of the chairman in the circumstance, we are of a considered view that,*



*assessors did not give any opinion for consideration in the preparation of the tribunal judgment and this was a serious irregularity.”*

In the light of the above cited authorities, and since has already been stated, the proceedings in this matter, the opinions of the assessors were not recorded nor the names of assessor appear in the coram, I agree that the faulty is a serious anomaly sufficient to nullify the proceedings of the trial tribunal. Consequently, the proceedings of the tribunal are hereby quashed and the judgment set aside. I order that the matter be heard afresh before another chairman sitting with a new set of assessors. Since the faulty was occasioned by the tribunal, each party to bear its own costs.

Order accordingly.



**G. N. Isaya**

**JUDGE**

**29/09/2022**

**Court:**

Judgment delivered today 29<sup>th</sup> day of September, 2022 in the presence of Erieth Barnabas Advocate for the Respondent, the Appellants present in person Grace Mutoka, B/C and Audax Vedasto, Judge's Law Assistant.



**G. N. Isaya**

**JUDGE**

**29/09/2022**