

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

**BUKOKA DISTRICT REGISTRY**

**AT BUKOKA**

**LAND APPEAL NO. 31 OF 2022**

*(Arising from Land Application No. 39/2021 of the District Land and Housing Tribunal of Kagera at Bukoba)*

**MASANZU KIPINGILI T/A LUBELA**

**COLLEGE OF HEALTH & ALLIED SCIENCE ----- APPELLANT**

**VERSUS**

**AARON KABUNGA----- RESPONDENT**

**JUDGMENT**

***28/09/2022 & 03/10/2022***

**Isaya, J.**

This present appeal emanates from Land Application No. 39 of 2021 of District Land and Housing Tribunal for Kagera at Bukoba. The Respondent, Aaron Kabunga, entered into lease agreement with the Appellant, Masanzu Kilingili t/a Lubela College of Health and Allied Science for renting his premises situated at plot No. 530 Block "DD" Kashai Centre within Bukoba Municipality, intended to use it as the training institute for a three years contract, renewable. The terms were put into writing and the parties signed the memorandum of understanding. However, the business did not operate as expected, the terms of payment were not complied.

After a long battle of demanding, the Respondent decided to sue the Appellant vide Application No. 39 of 2021 at Bukoba District Land and Housing Tribunal claiming for payment of outstanding rent totaling TZS. 65,000,000/=. In the trial tribunal, the Respondent stated that in their agreement, that was signed on



23/02/2015, the Appellant was to pay TZS. 30,000,000/= annually in two instalments, that is by paying TZS 15,000,000/= after every six months. It was his testimony that the Appellant paid TZS 15,000,000/= only and never paid any other amount.

In his defence, the Appellant admitted to have paid TZS. 15,000,000/= only but averred that he ran the business for ten months only. He contended that the outstanding rent was 17,000,000/= and not TZS. 65,000,000/=. He also had averred that the parties had agreed to share the water bills costs and it was not his duty to rehabilitate the premises after the cease of business. At the end, the tribunal decided in favour of the Respondent. The Appellant dissatisfied with the judgment and decree of the trial tribunal, filed this present appeal. The memorandum of appeal boils on the following five grounds of appeal;

*"1. That, the tribunal erred in law and fact to enforce terms and conditions under memorandum of understanding.*

*2. That, the tribunal erred in law but mis-interpleading the terms in the memorandum, of understanding which led to unfair decision that did not conform to the terms of the parties.*

*3. That, the tribunal erred in law and facts by deciding the matter in favour of the respondent who failed to prove his case.*

*4. That, the tribunal erred in law by failure to adhere to procedure of tendering and admission of documents.*



*5. That, the tribunal erred in law by failure to comply with the legal standard as the effective involvement of assessors."*

And prays for the proceedings of the trial tribunal be quashed and the decision be set aside with costs.

When the appeal was called on for hearing, the Appellant was represented by Mr. Victor Blasio, Advocate while the Respondent was represented by Mr. Frank John, Advocate.

Before commencement of the hearing of the appeal, I engaged both advocates in a brief dialogue on the grounds of appeal. Shortly, both agreed that ground No. 5 address a serious irregularity in the record of the trial tribunal on the failure to give reason of dissenting to the opinion of one of the assessors. Mr. Victor therefore, dropped the other grounds of appeal and submitted on the fifth ground.

Submitting on ground No. 5, Mr. Victor stated that the chairman's failure to assign reason in departing to the opinion of the assessor contravened Section 24 of the Land Dispute Court Act, Cap. 216 R: E 2019. He too cited the case of **Constantine Kapesa & Another Vs. Elizabeth Francis Sakaya (As administratrix of estate of the late Suzan Ngao)**, Land Appeal No. 29 of 2014 High Court, at Mwanza, in which Maige, J (as he then was) stated;

*"In my judgment therefore, for a decision of the District Land and Housing to be compliant with the provision of Section 24 of the Land Court Act, it must have three elements. First, a brief statement of the opinions of assessors or each of them should there be conflicting opinion. Two, a clear statement of whether the chairman agrees or disagrees with the opinions or either of them.*



***Three, reasons for departure from the opinion in the event of difference.***”(Emphasis given)

He lastly prayed for the appeal to be allowed by quashing the proceedings and setting aside the judgment of the District Land and Housing tribunal for Kagera.

Mr. Frank conceded to the submission as noted earlier.

As there is no any point under controversy in this appeal, I however find it appropriate at this juncture to reproduce Section 24 of the Land Dispute Court Act as here under.

*"24 in reaching decision, the chairman shall take into account the opinions of the assessors but shall not be bound by it, except that the chairman shall in the judgment give reasons for differing with such opinion"*

As it was submitted by Mr. Blasio and conceded by Mr. Frank, the chairman conceded to the opinion of one Christina Kagiza (assessor) but failed to assign any reason in dissenting to the opinion of the second assessor at page 11 of the judgment. In my opinion, the above cited provision of law makes it imperative that the reasons should be given in differing with the opinion of the assessor. Since the reasons for departure from the opinion of the assessor has not been given. I find the omission to be a fatal irregularity. As stated in the case of **Constantine Kapesa & another Vs. Elizabeth Franceis Sakaya** (supra), the remedy is to set aside the judgment.

Before I pen down, the counsel for the Appellant prayed for the proceedings to be quashed too. I was very hesitant at the beginning. I wondered as to why the advocate for the Respondent left the prayer to go unchallenged. I took time to revisit again the proceedings of the trial Tribunal. I found another anomaly that



the opinions of the assessors were not recorded. On 08.02.2022 where the chairman only stated "*maoni yamesomwa kwa wadaawa*" Meaning, the opinion have been read over to the parties. It is unfortunate that the opinions were not recorded and do not appear in the proceedings. The law requires the opinion to be recorded (see the case of **Tubone Mwambeta Vs. Mbeya City Council, Civil Appeal No. 287 of 2017**, CAT and the **Ameir mbarak & Azania Bank Corp. Ltd. Vs. Edgar Kahwili, Civil Appeal No. 154 of 2019**. In the case of **Tubone Mwambeta Vs. Mbeya City Council** (supra) the CAT insisted that

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

In this matter, I find that there is a serious irregularity in the proceedings of the trial tribunal too for failure to record the opinion of the assessors.

All said, I find the proceeding and judgment of the trial tribunal a nullity. I proceed to quash the proceedings and set aside the decision of the tribunal. Any interested part may file a fresh suit in a competent tribunal. Since the irregularity was occasioned by the tribunal, I make no order as to costs.

Order accordingly.



**G. N. Isaya**

**JUDGE**

**03/10/2022**

**Court:** Judgment delivered in chamber court this 03<sup>rd</sup> day of October, 2022 in the presence of Frank John, Advocate for Respondent, also holding brief for Victor Blasio, Advocate for the Appellant, Audax Vedasto (Judge's Law Assistant) and Grace Mutoka (B/C).



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**G. N. Isaya**

**JUDGE**

**03/10/2022**

A handwritten signature in blue ink, appearing to be "G. N. Isaya".