

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

**BUKOBIA DISTRICT REGISTRY**

**AT BUKOBIA**

**LAND APPEAL NO. 92 OF 2021**

*(Arising from the decision of the District Land and Housing Tribunal for Muleba at Muleba in Application No. 15 of 2016)*

**MOHAMED AKIBARU KADURU -----APPELLANT**

(Administrator of the estate of the late Akibaru Mohamed Kaduru)

**VERSUS**

**SADAT MTEGAGURA -----1<sup>st</sup> RESPONDENT**

**AMINI AKIBARU ----- 2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

*21/09/2022 & 23/09/2022*

**Isaya, J.:**

The appellant, unsuccessful, sued the respondents at Muleba DLHT claiming that the 2<sup>nd</sup> respondent, unlawfully sold the Suitland to the 1<sup>st</sup> respondent while the same was part of the estates of Akibaru Mohamed Kaduru. Aggrieved with the decision of the DLHT, the appellant has appealed to this court with four (4) grounds of appeal that:

- 1. That the District Land and Housing Tribunal for Muleba erred in law and fact in holding that the suit land is not part of the estate of the late Akibaru Mohamed Kaduru while the evidence on record proved the suit land to be part of the said estate and that the same is not yet distributed to legal heirs.*
- 2. That the trial tribunal erred in law and fact in failing to address the issues pleaded and agreed by the parties causing injustice to the appeal.*

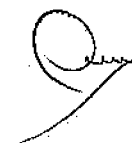


3. *That the Honorable District Land and Housing Tribunal for Muleba erred in law and fact in holding against the appellant on extraneous grounds which are not supported by evidence on record.*
4. *That the Honorable District Land and Housing Tribunal erred in law and fact in holding for the respondents basing on forged and unreliable documents which did not transfer any title to the first respondent contrary to the law.*

A brief background of the dispute giving rise to the instant appeal can be gleaned from the brief facts as follows: The appellant and the 2<sup>nd</sup> respondent are children of Akibaru Mohamed Kaduru (the deceased) who died in 2000. That before his demise, the deceased left some properties; among them is the Suitland. In 2004, the 2<sup>nd</sup> respondent sold it to the 1<sup>st</sup> respondent for 200,000/= claiming that it his was his share bequeathed to him by his father. The appellant being the administrator of estate of the deceased, sued the respondents before Muleba DLHT contending that the sale was unlawful because the estates of the deceased was not yet distributed to the rightful heirs. In defence, the 1<sup>st</sup> respondent stated that he lawfully purchased that land from the 2<sup>nd</sup> respondent in 2004 for 200,000/= which was left to him by his father before death. That the ownership was approved by the 2<sup>nd</sup> respondent's mother, Shamsa Halfan, also was witnessed the VEO-Karutanga, the 2<sup>nd</sup> respondent's mother, the hamlet chairman and other two witnesses.

When the appeal was called on for hearing, the appellant was represented by Mr. Joseph Bitakwate, leaned advocate while the Respondent was represented by Mr. Gildon Mambo, learned advocate.

At the outset, Mr. Bitakwate informed the court that they discovered a very serious legal anomaly in the proceedings which is capable of disposing of the whole matter. He abandoned the grounds of appeal and submitting on the alleged point of he stated that at page 52 of the typed proceedings, on 18/10/2021 the matter



was fixed for opinion of the court assessors. The opinion of assessors was read in court but the chairman failed to record the opinion of assessors. The High Court and Court of Appeal has directed in a number of authorities that the opinion should be recorded. He cited the case of **Antidius Audustine and Another vs. Martine Mutayoba** Land Appeal No. 20 of 2022, at page 4 – 6 this court insisted on recording the opinion of assessors and format. Failure to show the opinion renders the proceedings, judgment and orders a nullity. He again cited **Edina Adam Kibona Vs. Absolom Swere (Sheli)**, Civil Appeal No. 286 of 2017, Court of Appeal at page 4-6, stated the same and ordered the matter to start afresh. He thereafter prayed for this court to nullify the proceedings, judgment and order of the District Land and Housing Tribunal for Muleba District in Application No. 15 of 2016.

In reply, Mr. Mambo conceded to the submission and joined with Mr. Bitakwate stating that failure to record the assessors' opinion is a serious anomaly which renders the proceedings, judgment and the decree thereon a nullity.

After receiving the submissions from both sides, I will pause here and observe that both the learned advocates agree that the District Land and Housing Tribunal for Muleba did not record the opinion of assessors in Application No.15 of 2016. In the cited case of **Antidius Audustine and Another vs. Martine Mutayoba (supra)**, this court citing with approval the case of **Tubone Mwambeta v. Mbeya City Council**, Civil 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 disputes. As such their opinion must be on record." [Emphasis added]*



Furthermore, a similar situation occurred in the case of **Amie Mbarak and Azania Bank Corp. Ltd vs. Edgar Kahwili**, Civil Appeal No. 154 of 2015 (unreported) the Court of Appeal had the following to say:

*"Therefore, in our considered view, it is unsafe to assume the opinion of the assessor which is not on the record 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."*

Now, based on the above findings, given the fact that the assessors were not invited to give their opinion according to the law, that renders the proceedings of the trial tribunal a nullity. I hereby quash the proceedings and set aside the decision of the trial tribunal. Consequently, I order the matter be tried de novo before another Chairman sitting with a new set of assessors. Given the fact that the errors were occasioned by the tribunal, each party to shoulder its costs. It is so ordered.

**DATED at BUKOBA** this 23<sup>rd</sup> day of September, 2022.



**G.N. Isaya**

**JUDGE**

**23/09/2022**

**Court:** Judgment delivered this 23<sup>rd</sup> September, 2022 in presence of Mr. Gildon Mambo, Advocate for the respondent, also holding brief of Mr. Joseph Bitakwate, the Appellant and the 1<sup>st</sup> respondent also present in person.



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**G.N. Isaya**

**JUDGE**

**23/09/2022**

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