

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL NO. 76 OF 2021

*(Arising from Land Application No. 69 of 2019 at Maswa District Land and
Housing Tribunal)*

MOSES BUGARAMA..... APPELLANT

VERSUS

VICENT MACHEMU BUYUNGU.....1ST RESPONDENT

KUZENZA JILUNGU.....2ND RESPONDENT

JUDGMENT

4th & 7th October 2022

Nongwa, J.

The appellant above named having been aggrieved by the judgment and decree of Maswa District Land and Housing Tribunal delivered on 15/11/2021 before Hon. J. F.Kanyerinyeri- Chairman in favour of the Respondent appeals to this Honorable court on the following grounds:-

- 1. ,That, the Honorable trial chairman of District land and Housing Tribunal for Maswa at Maswa erred in law and fact in falling to analyze the evidence tendered before it which proved on balance of probability that the Appellant was the first purchase of the suit land he purchase the same in 2011 to 2017 from different people when compare to the 1st Respondent who alleges purchase was the one who was obliged to be declared the lawful owner of the suit land*

comprising of eight and a half (8 1/2) acres not eight (8) as being alleged by the 1st respondent.

- 2. That, the learned trial chairman of District land and Housing Tribunal for Maswa at Maswa erred in law and in fact declaring the 1st Respondent the lawful owner of the suit land comparing of 8 acres upon purchasing the same from the 2nd Respondent while the fact is that the said land was divided to family members of the 2nd Respondent on 05/05/2017 as proved by minutes of the family meeting held on 05/05/2017 which was tendered by the Appellant as exhibit.*
- 3. That, the learned trial chairman of the District Land and Housing Tribunal for Maswa at Maswa erred in law and in fact by relying on the evidence tendered by the 1st Respondent and his witnesses Kwangu Kuzenza (PW2) who is his son who testified that the sale agreement of the suit land between the 1st and 2nd Respondent was entered before hamlet Chairman by the same who gave his evidence as PW3.*
- 4. That, the learned trial chairman of the District Land and Housing Tribunal for Maswa at Maswa erred in law and in fact by failing to note that the neighbors to the suit land alleged to have been purchased by the 1st respondent in the said sale agreement are quite different to the ones pointed by him during hearing of the land dispute at the trial tribunal. Moreover the 1st respondent has never cultivated the suit land even at once rather it is the Appellant who is in occupation of*

the suit land and being a neighbor as alleged by the Respondents, he was involved during the sale of the suit land between the 1st and 2nd Respondent.

5. *That, the learned trial chairman of the District Land and Housing Tribunal for Maswa at Maswa erred in law and in fact dissenting with opinion given by his assessors who opined the appellant to be lawful owner of the suit land without giving plausible reasons for doing so. Moreover, neighbors to the land being occupied by the Appellant are different to neighbors pointed out by the 1st respondent bordering his land alleged to have been purchase from the 2nd respondent.'*

The Appellant prays for grant of this appeal with cost and the judgment and decree of Maswa District Land and Housing Tribunal be set aside and the Appellant be declared the lawful owner of the suit land.

Before hearing of the appeal, Mr. Emmanuel Sululu learned counsel for the appellant prayed under OXXX IX rule 2 of the Civil Procedure Code Cap 33 R.E 2019, and the court considered the prayer by the counsel for the appellant, granted leave to present the new ground of appeal and abandoned the rest of the ground presented earlier. He had now a new ground that the proceedings at the District Land and Housing Tribunal at Maswa was not proper for the court did not follow procedure laid down by law, section 23 (2) of the Land Dispute Court's Act together with Regulation 19 (2) of the Land disputes court (the District Land and Housing Tribunal) regulation 2003.

He argued that the provisions impose Mandatory duties to a chairman to order every member of the tribunal to give opinion before

writing the Judgment. Mr Sululu argued that the procedure was not followed because the matter was filed on 30/12/2019, at Maswa District Land and Housing Tribunal. The complainant was Vicent Machem Buyagu and Respondent were Moses Bugalama and Ruzenza Jilunga. PW1 Vicent Buyagu, in his testimony was on 14/12/2020, and the last witness testified and the closure was 25/8/2021 on that date, from the proceedings, the chairman ordered 1. Defense case marked closed, 2. Assessors opinion to be opened, 3. Assessors opinion to be read on 30/8/2021 4. Judgment on 30/8/2021.

On 30/8/2021 Judgment was not read nor assessors opinion so, the matter was adjourned and assessors' opinion too.

That, on 15/11/2021, order of the tribunal says assessors' opinion has been read to assessors, that another order followed; Judgment is passed and signed by Kanyerinyeri Chairman and again signed by Kaaya Successor. That was the end of the proceedings, to him, Mr. Sululu, this was not proper and submitted that the opinion of assessors was not prepared or read because, they are not reflected in the proceedings.

Mr Sululu supported his argument with the court of appeal decision in the case of **Edina Adam Kibona Vs Absalom Sheni Civil Appeal No. 286 of 2017** and **Hamisa S. Mohasan and two others Vs Taningira contractors, Civil Appeal No. 51 of 2013**, the cases were referred by the Dodoma High Court, **Land Appeal No. 70 of 2018, Daudi Mahoro and Maulid Kitange vs Shabani Lynga Mshoko** (Admin), where, Hon Siyar J, insisted the Importance of Assessors opinion to be written and be recorded in the proceedings.

Mr Sululu commented further that, the court of appeal stated that the opinion must be availed in the presence of parties to enable them to know the nature of the opinion that has been considered in the verdict of the Chairman. He referred the case of **Tubone Mwambeta Vs Mbeya City Council, Civil Appeal No. 287 of 2017.**

Mr Sululu argued that it was not possible for the same day the opinion was read and same day compose judgment. It is not possible and it is not reflected in the proceedings, he prayed that the whole proceedings, Judgment and Decree be nullified and the two sides be restored to the position they were before.

Mr. Masige, learned counsel for the 1st Respondent, replied that construction of that provision on requirement of assessors opinion, nowhere it is written that the said opinion will be in the proceedings. That doubting that, may be even the opinion is not there is mere speculations, he has no evidence. Nowhere he alleged to have at least perused the court record.

Having gone through the two sides submission in respect of the new ground brought about by the appellant, I find myself in consensus with the argument by the counsel for the respondent. In have gone through the lower tribunal records and found assessors opinion in there, the trial tribunal proceedings show clearly the presence of the assessors.

I strongly acknowledge the research done by Mr. Sululu for the appellant, and the authorities he came up with, and in particular the importance of the trial tribunal being with the aid of assessors, the authority cited are distinguishable, in those cases records were silent if the assessor's opinion were solicited, recorded and read. Unlike in what

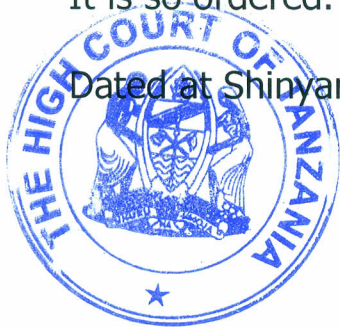
was done by the tribunal in the impugned judgment. The involvement of the assessors is clearly shown.

As submitted by the counsel for the respondent that from the proceedings, the opinion and Judgment, on page 29 and 30 of the proceedings, the opinion was read 15/11/2021, no time is indicated, it is possible to do it in a single day unlike what is claimed by the counsel for the appellant. Human beings are different in competence. It was not an issue to wonder for the Chairman to read assessors opinion and same day write and deliver Judgment.

From the very beginning at page 28 of the proceedings bottom paragraph, the Chairman stated that assessor's opinion to be opening, it went on after assessors opinion being written, they were read clearly the case was properly conducted at the trial tribunal.

In the end I find the appeal with no merits, consequently the same is hereby dismissed with costs.

It is so ordered.



Dated at Shinyanga this 7th October 2022


V.M. Nongwa
Judge
07/10/2022