

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

AT BUKOBA

LAND CASE APPEAL NO. 41 OF 2022

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 25 of 2020)

WINNIE KAITESI MBWANA APPELLANT

VERSUS

JOVITHA DONATUS JOSEPH RESPONDENT

JUDGMENT

Date of Judgment: 29.09.2022

A.Y. Mwenda J,

Ms. Winnie Kaitesi Mbwana (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 25 of 2020, preferred this appeal with seven (7) grounds. In the impugned matter the Hon. Chairman gave the following orders and I quote,

- i) That there was no agreement to repair the said business room.
- ii) That the amount of TZS 3,220,000/= claimed by the applicant has no merits.
- iii) That the applicant should remove all the things she added in the business room after repairing.
- iv) That this application is dismissed and
- v) The Applicant should pay costs.

During the hearing of this appeal the appellant was represent by Mr. Alli Chamani while the respondent hired the legal services from Mr. Lameck Erasto learned counsel.

During the hearing of this appeal Mr. Lameck submitted that after going through the proceedings of the District Land and Housing Tribunal he noted illegalities regarding lack of assessors' opinion and the said purported opinion was read in the absence of the applicant.

He submitted that at page 32 of the tribunal's proceedings the coram shows the applicant was not present when the matter was set for assessors' opinion but it seems the tribunal continued to receive the said opinion contrary to the law.

He further submitted that the Hon. Chairman just recorded that the opinion of assessors was read to the respondent but the same was not recorded in the proceedings which is contrary to the law and guidance of the Court of Appeal in the Case of EDNA KIBONA VS ABSALOM SWEBE (SHELI) CIVIL APPEAL NO. 286 of 2017. He thus concluded his submission by stating that this anomaly vitiates the whole proceedings.

In reply to the submission by the learned counsel for the respondent, Mr. Chamani submitted that he agrees with the submission by the learned counsel for the respondent and added in that the whole proceedings is a nullity.

I have revisited the records and as it was rightly submitted by the learned counsel for the respondent, the trial Tribunal's proceedings is tainted with illegalities. At page 33 of the proceedings the Hon. Chairman put it on record that assessors' opinion read in the presence of the respondent. However, the said opinion is not featuring (reflected) in the records. Section 23 (2) of the Land Dispute Court's Act provides in a mandatory term on the importance of observing the composition of the tribunal and the duty of assessors. This section states as follows that;

*"S. 23 (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]*

Faced with a similar scenario, the Court of Appeal in the case of SIKUZANI SAID MAGAMBO & ANOTHER VS MOHAMED ROBLE CIVIL APPEAL NO. 197 OF 2018 (unreported) having reproduce section 23(1) and (2) of the Land Dispute Courts Act 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”.

Regarding consequences for failure to comply with the above provision the Court in the case of “SIKUZANI MAGAMBA” (supra) while citing the case of 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 did not record the opinion of assessors, it is therefore considered that no opinion of assessors was given and read in the presence of the parties before the judgment was composed. In other words, it is as if there were no assessors who were in attendance and as such it cannot be said that the tribunal was properly

constituted. As it was rightly submitted by learned counsels for both parties the whole proceedings of the District Land and Housing Tribunal is a nullity.

From the foregoing observations, this appeal therefore succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal. For that matter any order emanating therefrom is set aside. Any party interested to pursue his rights may prefer a fresh suit before a competent tribunal. Each party shall bear its own costs.

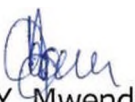
It is so ordered.




A.Y. Mwenda
Judge
29.09.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Alli Chamani the learned counsel for the Appellant and in the presence of Mr. Lameck Erasto the learned counsel for the Respondent.




A.Y. Mwenda
Judge
29.09.2022