

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

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE APPEAL NO. 54 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 124 of 2008)*

**DERICK PONSIAN NDYAMUKAMA ..... APPELLANT**

**VERSUS**

**ADELINA KASHAGA .....1<sup>ST</sup> RESPONDENT**

**YULITHA KASHAGA .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of Judgment: 31.10.2022*

*A.Y. Mwenda J.*

Mr. Derick Ponsian Ndyamukama (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 124 of 2008, preferred this appeal with six (6) grounds. In that matter the applicants (now the respondents) were declared the lawful owners of the Suit house situated at Plot No. 48 Block Y Kishenge, Bukoba Township. On the other hand, the respondents were ordered to pay the appellant (the then applicant) the remaining balance of TZS 700,000/= as per exhibit "D2".

Before the hearing of this appeal commenced this court discovered an anomaly with the proceedings of the District Land and Housing Tribunal. The said anomaly is in respect of lack of assessors' opinion. As such during the hearing, the court directed the parties to only submit in that regard.

Given the floor to submit in regard to the raised illegality Mr. Rweyemamu submitted that on 20<sup>th</sup> April 2020 the Hon. Chairman ordered the matter to be placed for assessors' opinion. He said on the date fixed for assessors' opinion the records are silent as to whether the said opinion was read to the parties or not. He submitted that this is against regulation 19 (2) of the Land Dispute's Courts Act (The District Land and Housing Tribunal) Regulation GN 174 of 2003. He thus prayed this court to nullify the whole proceedings and to fix this matter before another chairman with new set of assessors.

On his part, Mr. Frank Kalori supported the submission by Mr. Rweyemamu that this matter be remitted back before another chairman with new set of assessors.

I have revisited the records and as it was rightly submitted by the learned counsels, the trial Tribunal's proceeding is tainted with illegality. At page 121 of the tribunal proceedings the Hon. Chairman recorded as follows and I quote;

*"Mr. Mathias Rweyemamu: The matter is coming for assessors' opinion we are ready.*

*Mr. Frank: I am read too.*

*Order: Judgment on 30/04/2020"*

However, the said opinion is not featuring (reflected) in the records. Section 23 (2) of the Land Dispute Court's Act provide in a mandatory term the importance

of observing the composition of the tribunal and the participation of assessors.

This section states as follows;

*"Section 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]*

Regarding the above position, the Court of Appeal in the case of SIKUZANI SAID MAGAMBO & ANOTHER VS MOHAMED ROBLE CIVIL APPEAL NO. 197 OF 2018 (unreported) having reproduced 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 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 opinion of assessors it is therefore considered that no opinion of assessors was availed and read in the presence of the parties before the judgment was composed.

From the foregoing observations, this appeal succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal in Land Application No. 124 of 2008 and any other order emanating therefrom is set aside. I also order trial de novo before a different chairman and new set of assessors. Each party shall bear its own costs.

It is so ordered.




  
A.Y. Mwenda

**Judge**

31.10.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Mathias Rweyemamu the learned counsel for the Appellant and in the presence of Mr. Frank Karoli learned counsel for the Respondent.



  
A.Y. Mwenda

**Judge**

31.10.2022