

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

AT BUKOBA

MISC. LAND CASE APPEAL NO. 15 OF 2021

*(Arising from the District Land and housing Tribunal for Kagera at Bukoba in Appeal No. 77 of 2018
and original Civil Case No. 4 of 2018 before Nsunga Ward Tribunal)*

MOHAMUD SWAIB MAGAYANE..... APPELLANT

VERSUS

JAMILA SAIDI RESPONDENT

JUDGEMENT

Date of Judgment: 21.03.2022

A.Y. Mwenda, J

Jamila Said (the Respondent) approached Nsunga Ward Tribunal on 31st May 2018 and lodged Civil Case No. 04 of 2018 complaining that Mohamud Magayani abused the property of orphans and looting their house.

The Ward Tribunal after a full hearing of the dispute, decided in favour of the Respondent.

The decision and reasoning of the Ward Tribunal irritated the Appellant hence he preferred Appeal No. 77 of 2018 before the District Land and Housing Tribunal for Bukoba at Kagera. The District Land and Housing Tribunal dismissed the appeal in favour of the Respondent.

The reasoning of the District Land and Housing Tribunal dissatisfied the Appellant as a result, through the services of Mr. Bengesi learned counsel filed the present appeal.

In response to the grounds of appeal, the respondent through the services of Mr. Mathias Rweyemamu, learned counsel filed a reply accompanied with a notice of preliminary objection on a point of law.

When this appeal was scheduled for hearing on 21st March 2022, Mr. Mathias Rweyemamu the learned counsel for the respondent prayed to abandon the raised preliminary objection and this court ordered the hearing of the appeal to proceed on merits.

Before the hearing of this appeal commenced, this court noted two irregularities caused by the tribunal with regard to participation of/and opinion of assessors. In essence the records do not show if assessors participated in the hearing and also that their opinion was not read over to the parties. In that regard, this court invited the learned counsels to address the court on the said issues raised by the court Suo motu.

On his part, Mr. Mathias learned counsel for the respondent submitted that, he has noted the said irregularities and he therefore prayed for this court to nullify the proceedings and order any interested party to file a fresh suit.

On the other hand, Mr. Bengesi the learned counsel for the appellant had nothing to add and he supported the submissions by the learned counsel for the respondent.

In the view of the said anomalies, it is clear from the record that the proceedings of the District Land and Housing Tribunal does not show if the Hon. Chairman sat with Hon. Assessors. During hearing dates, the coram do not

show any member who was in attendance. This therefore is an indication that the tribunal sat without the aid of assessors which is a serious illegality which renders the whole proceedings nullity. It is trite law that the District Land and Housing Tribunal is properly constituted when the Hon. Chairman sits with not less than two assessors. See section 23(1) of the Land Dispute Court Act [CAP 216 R.E 2019]. It is also trite law that where the trial has to be conducted by the aid of assessors they must actively and effectively participate in the proceedings. See the case of ***Edna Adam Kibona vs Absolom Swebe (Sheli) Civil Appeal No. 286 of 2017 Court of Appeal of Tanzania (unreported)***.

Guided by the above position of law it is crystal clear from the record, that the District Land and Housing Tribunal was not properly constituted.

In regard to lack of assessors' opinion, it is trite law that when the chairman sits with the aid of assessors the said assessors must actively and effectively participate in the proceedings and shall give their opinion before the parties and before the chairman reaches judgment. See ***section 23(2) of the Land Disputes Court Act and Regulation 19(2) of the Land Dispute Courts (The District Land and Housing Tribunal) Regulation of 2003***.

In our case, as I have pointed out herein above, the coram is silent on participation of assessors but the Hon. chairman acknowledged the presence of assessor's opinion in the judgment. This is fatal because it is not known how the opinion of assessors found its way in the judgment.

It is trite law that the opinion of assessors must be detailed and reflected in the proceedings. This position is backed by the guidance of this court to the District Land and Housing Tribunal in the case of **Rev. Peter Benjamini vs Tumani Mtazamba Land Appeal No. 69 of 2019** at page 11 where the court stated as follows:

"For the purpose of giving guidance to the District Land and Housing Tribunal, I wish to reiterate that, after the closure of the defense case, the chairman must schedule the case for assessors' opinion. On the date fixed for assessors' opinion the proceedings for instance should read as follows;

Date: 10th August 2021

Coram: S.J Mashaka

T/c: Magoma

Members: T.J Kashisha and J.N Ndoma

Applicant : present in person

Respondent: present in person

Tribunal: the case is coming for assessors opinion

Applicant: I am ready for opinion

Respondent: I am ready too

Assessors opinions

1st assessor T.J Kasisha

Maoni yangu ni.....

2nd assessor J.N.Ndoma

Maoni yangu ni.....”

In our appeal, what the Hon. Chairman did was illegal as it intent to infer to an assumption that assessors gave their opinion which is not the case.

In emphasizing the importance of putting the contents of the detailed assessor’s opinion on records, the Court of Appeal in the case of **Edina Adam Kibona V. Absalom Swebe (SHELI) (supra)** while making reference to are **Amir Mbaraka and Azania Bank Corporation Ltd V. Edgar Kahwi** held inter alia that:

“ Therefore, in our considered view it is un safe to assume the opinion of assessor which is not on the record by merely reading the acknowledgement of the chairman, we are of the considered view that assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularly”

From the foregoing observations, this court finds the District Land and Housing Tribunal's proceedings tainted with irregularities for being improperly constituted and for lack of assessor's opinion. This appeal therefore succeeds by quashing the proceedings of the District Land and Housing Tribunal and setting aside the judgment and any other order emanating from Application No.77 of 2018. With that regard, any interested party shall institute a fresh suit before proper forum.

Since the anomalies and irregularities giving rise to these outcomes was caused by the trial tribunal's error, this court order each party to bear its own costs.

It is so ordered.

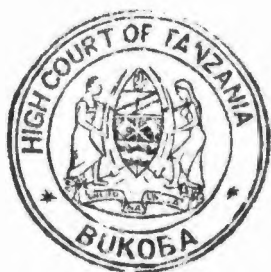


A.Y. Mwenda

Judge

21.03.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Mathias Rweyemamu the learned counsel for the respondent and in the Mr. Eliphasi Bengesi learned counsel of the appellant.



A.Y. Mwenda

Judge

21.03.2022