

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

AT BUKOBA

LAND APPEAL CASE NO. 39 OF 2022

(Arising from Ngara District Land and Housing Tribunal in Land Application No. 7 of 2021)

LUFWEGA NDUSHI KABAHUNGU..... APPELLANT

VERSUS

DEVELOPMENT AND LIFE RELIEF ASSOCIATION

(DELIRA)..... RESPONDENT

JUDGMENT

Date of Judgment: 20.02.2023

A.Y. Mwenda, J.

The appellant preferred the present appeal to challenge the decision of the District Land and Housing Tribunal for Ngara at Ngara in Land Application No. 07 of 2021. In the said suit, the respondent sued the appellant for encroaching about 434.35 hectares of the land. The respondent prayed for declarations order that the land in dispute belongs to him. Further to that, the respondent prayed the appellant to be ordered to vacate from the land in dispute.

After the hearing of the suit, the Hon. Chairman gave the judgment in favor of the respondent by granting the orders as prayed.

Aggrieved by the said decision, the appellant has lodged this appeal with four grounds. For reasons which I am about to advance, I am not going to reproduce the said grounds of appeal.

At the hearing of this appeal, the appellant was represented by Mr. Liberata Sweetbert, learned counsel. On the other hand, the respondent marshalled Raymond Laurent, learned counsel.

Before the hearing commenced, the court, suo motu, informed the parties on existence of illegality with regard to the trial tribunal's records. The same is in respect of involvement of assessors. Since the same is capable of determining the fate of the present appeal, parties were directed to only confine their argument in that angle.

Following the said directives, Mr. Raymond Laurent was the first to take the floor. He submitted that at page 22 of the typed proceedings ie on 27/4/2022, the tribunal had two assessors in attendance ie one CHARLES S/O MBEIKYE and CHRISTINA MUGASHA. He said, although at page 49 ie on 24/5/2022 it is alleged that the assessors gave their opinion, the same is not reflected in the records. The learned counsel submitted that in the copy of judgment, particularly at page 6 and 7 the Hon. Chairman made reference to the assessors' opinion. The learned counsel reiterated further in that since the said judgment is the product of the proceedings thus, as long as the judgment does not reflect the proceedings in regard to opinion of assessors, then it is as good as there was no opinion of assessors at all. The learned counsel supported his argument by citing S. 23 (2) of the Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19 (2) of GN.

174/2003. He thus concluded his submission with a prayer to this court to nullify the proceedings.

On her part, Ms. Liberata Sweetbert, learned counsel for the appellant supported Mr. Raymond's argument. She said S. 23 (2) of the Land Disputes Courts Act [Cap 216 RE 2019] and Regulation 19 (2) of GN. 174/2003 were violated. She also concluded by praying this court to nullify the proceedings and orders of the District Land and Housing Tribunal.

Having summarized the submissions by the learned counsels for the parties, it is now the duty of this court to determine this matter. From the records, it is clear that the lower tribunal's proceeding is lacking assessors' opinion. Despite their involvement in the hearing of the case, it is evident that on 24/5/2022 when the matter was set for receipt of assessor's opinion, the same was not recorded. What is recorded by the Hon. Chairman reads as follows and I quote, that;

"Baraza: shauri linakuja kwa ajili ya maoni.

Mwombaji: tupo tayari kupokea

Baraza: maoni yamesomwa mbele ya mwakilishi wa mwombaji bwana Frank Emmanuel na akiwepo Emmanuel Charles aliyetoa taarifa za kutokuwepo kwa mjibu maombi. 24/5/2022

Amri: Hukumu 26/5/2022

Imesainiwa: R. Mtei

Mwenyekiti.

24/5/2022.

It is important to note that involvement of assessors in matters before the District Land and Housing Tribunal is the legal requirement. This is by virtue of S. (1) and (2) of the District Land and Housing Tribunal, Act [Cap 206 RE 2019] which read;

*" 23(1) The District Land and Housing Tribunal established under section 22 shall be composed of one chairman and not less than two assessors; and
(2) The District Land and Housing Tribunal shall be duly constituted when held by a chairman and two assessors who shall be required to give out their opinion before the chairman reaches the judgment."*

The take away from the above provision is that before the Hon. Chairman reaches the judgment, the assessors are required to give their opinion which shall be recorded. This position is emphasized in Regulation 19 (2) of Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003 thus;

"19 (2) Notwithstanding sub-regulation (1) of the regulation, the chairman shall, before making his judgment, require every assessor present, at the conclusion of the hearing to give his opinion in writing and one assessor may give opinion in Kiswahili."

In a bid to emphasize on the importance of recording the opinion of assessors, this court (Kilekamajenga J,) in the case of HOSEA ANDREA MUSHONGI V. CHARLES GABAGAMBI LAND CASE APPEAL NO. 66 OF 2021 held;

*"After the hearing of the witnesses, the chairman must schedule the case for **recording** of assessors' opinion. I decide to use the word '**record**' with the view of insisting that such opinion should appear in the proceedings. The procedure is, when an assessor is reading his/her opinion in the presence of the parties, the chairman should record such opinion. Therefore, it is not sufficient for the chairman to simply state, the **opinion of assessors recorded** without writing them down in the proceedings. If such opinions do not feature in the proceedings, their acknowledgment in the judgment is not acceptable."*

In the same footing, the court of appeal in AMEIR MBARAKA AND AZANIA BANK CORP. LTD V. EDGAR KAHWILI, CIVIL APPEAL NO. 154 OF 2013 (unreported) insisted on the tribunal's compliance to the above position by stating as follows, that;

"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessor 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."

Guided by the above authorities, since the trial tribunal's proceedings do not show whether assessors' opinion was given, that was a fatal irregularity that vitiated the proceedings. That being the case I hereby quash the proceedings and set aside the decision of the trial tribunal. Whoever wishes to pursue his right may do so before the competent tribunal.

Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda
Judge
20.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Ms. Liberata Sweetbert learned counsel for the Appellant and in the presence of Mr. Raymond Laurent learned counsel for the Respondent.




A.Y. Mwenda
Judge
20.02.2023

