

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

**AT DODOMA**

**MISC. LAND APPEAL NO. 35 OF 2022**

(Arising from the decision of the District Land and Housing Tribunal for Kondoa in  
Application No. 19 of 2014 dated 24<sup>th</sup> November, 2017)

**IDDY MCHANA.....APPELLANT**

**VERSUS**

**RAHIM JUMA HAJI (As the Administrator of the Estate  
of the late Juma Haji).....RESPONDENT**

*17/2/2023 & 28/2/2023*

**JUDGEMENT**

**MASAJU, J.**

The Appellant, Iddy Mchana, unsuccessfully sued the late Juma Haji who is now legally represented by Rahim Juma Haji (his Administrator of estate), the Respondent, in the District Land and Housing Tribunal for Kondoa, hence the appeal in this Court.

The Appellant's Memorandum of Appeal is made up of four (4) grounds of appeal including the first ground thus;

*"1. That, the trial Tribunal Chairman erred in law and facts in failing to allow the assessors to put their opinions in writing and presenting them to the parties prior to the writing of the judgement".*

The appeal was heard in the Court on the 17<sup>th</sup> day of February, 2023 whereby Mr. Paul Nyangarika and Mr. Charles Simon, the learned counsels appeared for the Appellant and Respondent respectively.

The Appellant submitted on the first ground only which he argued that it was capable of disposing the entire appeal. That, though there was written opinion by the assessors, the said opinions were not read over accordingly by them before the parties as manifest from record of the trial Tribunal. That, on 13/9/2017 there was an order that the trial Tribunal visit the *locus in quo* on 5/10/2017 and the judgement be delivered on the 24/11/2017. Thereafter the record is silent as to whether the reading of the assessor's opinion was done. What is evident on record is the delivery of the judgement on 24/11/2017. The Appellant submitted that the omission was contrary to the law and referred the Court to the case of **Sikuzani Saidi Magambo and Kirioni Richard versus Mohamed Roble** (CAT) Civil Appeal No.197 of 2018, Dodoma

Registry (unreported) wherein the Court of Appeal of the United Republic of Tanzania stated that the remedy thereof is to nullify the trial and the consequential decision thereof, hence order re-trial of the dispute. The Appellant did not pray for costs in the event the ground succeeds because the error was occasioned by the trial Tribunal.

The Respondent did not contest the validly first ground of appeal. He conceded that the assessors' written opinions were filed in the trial Tribunal but the assessors were not given opportunity to read them over before the parties. The Respondent added that the omission was contrary to section 23(2) of the Land Disputes Courts Act, [Cap 216 RE 2019 and that the remedy is to nullify the proceedings and order re-trial of the dispute if the parties will not settle the dispute amicably. The Respondent prayed that each party bear its own costs.

The Appellant maintained his submissions in chief and appreciated the Respondent's submissions.

That is what was shared by the parties in support of the appeal in the Court.

It is established law that upon closure of the defence case (conclusion of the trial of a land suit) and prior to composition of the judgement, the chairman of the trial Tribunal must accord the assessors an opportunity to read out their opinion in the presences of the parties and the same must be recorded, hence part of the proceedings. Reference to this be made to section 23(2) of the Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 as repeatedly interpreted by the Court in several decisions.

Thus, the Court agrees with the parties that the omission is a fundamental procedural error which has occasioned miscarriage of justice, hence vitiated the proceedings and the entire trial before the Tribunal as it is not curable under section 45 of the Land Dispute Courts Act, [Cap 216 RE 2019].

By virtue of the revisionary powers of the Court under section 43(1)(b) Land Dispute Courts Act, [Cap 216 RE 2019] the trial Tribunal's trial, the record of proceedings, the judgement, decree and orders

thereof are hereby severally and together nullified, quashed and set aside accordingly.

There shall be a trial "*de novo*" of the dispute before another chairman with a different set of assessors except if the parties reach amicable settlement of the dispute. The parties shall bear their own costs accordingly.



GEORGE. M. MASAJU

**JUDGE**

28/2/2023