

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

AT BUKOBA

LAND APPEAL NO. 75 OF 2022

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 09 of 2021 and original Civil Case No. 14 of 2020 at Kimwani Ward Tribunal)

MAJANJA LUKAMBA APPELLANT

VERSUS

CHARLES ZACHARIARESPONDENT

JUDGMENT

Date of Judgment: 23.05.2023

A.Y. Mwenda J,

Before Kimwani Ward Tribunal in Civil Case No. 14 of 2020, Mr. Majanja Lukamba instituted the land suit claiming his 20 acres against Charles Zakaria. At the end of the trial the respondent was declared the rightful owner of the suit land. Being dissatisfied with the judgment of the Ward Tribunal the appellant preferred an appeal before the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 09 of 2021. The said appeal was dismissed with cost for lack of merits.

Mr. Majanja Lukamba (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 09 of 2021, preferred this appeal with four (4) grounds.

At the hearing of this appeal the appellant was represented by Mr. Mathias Mashauri learned counsel while the respondent appeared in person without legal representation.

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 opinion which is lacking. 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. Mathias Mashauri submitted that section 24 of the Land Dispute Court Act [CAP 216 R.E 2019] directs the Hon. Chairman to consider the assessor's opinion. He submitted that the Hon. Chairman did not comply with the said legal requirement. He said that at page 12 of the proceedings, the chairman paraphrased the opinion of both assessors. He submitted that the said opinion does not suffice to be referred to as opinion of assessors.

He further submitted that the Hon. Chairman ought to have recorded each of the assessor's opinion and later consider it in his findings. He thus concluded his submissions by praying this court to nullify the District Land and Housing Tribunal's proceedings and for an order for each party to bear its own costs.

On his part, the respondent submitted that the assessor's opinion was so similar to each other and that is why the Hon. Chairman combined the said two

opinions. He concluded his submission by praying the court to issue necessary orders.

I have revisited the records and as it was rightly submitted by Mr. Mashauri, the learned counsel, the trial Tribunal's proceeding is tainted with illegality. At page 12 of the tribunal proceedings, the Hon. Chairman recorded as follows and I quote;

"Baraza: Shauri linakuja kwajili ya kusoma maoni, wazee wa Baraza wamesoma maoni yao mbele ya wadaawa. Wametoa maoni ya kumpa ushindi mjibu rufaa kwamba Ushahidi wake juu ya umiliki wa ardhi ya mgogoro ulikuwa mzito."

A closer look at the above summary shows that the opinion of assessor was recorded in violation of law. It is the legal requirement that before the Hon. Chairman delivers a judgment, the assessors have to register their opinion and the same shall be considered by Hon. Chairman in making his findings. In the case of REV. PETER BENJAMIN V. TUMAINI MTAZAMBA @MWEMA, LAND APPEAL NO. 69 OF 2019, this court while citing the case of TUBONE MWAMBETA V. MBEYA CITY COUNCIL, CIV. APPEAL NO. 287 OF 2017, CAT (Unreported) held inter alia that:-

"...the involvement of assessors is crucial in the adjudication of land disputes because apart from

constituting the tribunal, it embraces giving their opinion before the determination of the dispute. As such, their opinion must be on record." [emphasis added]

In regard to how the opinion of assessors should be recorded, the court, in the same case, issued a format in the following words and I quote:-

"On the date fixed for assessors' opinion, the proceedings, for instance, should read as follows:

Date: 10th August 2021

Coram: S.J Mashaka-Chairman

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 the opinion*

Respondent: *I am ready too.*

Assessors' opinion:

1st assessor-T.J. Kashisha

Maoni yangu ni kwamba.....

2nd assessor-J.N Ndoma:

Katika kesi hii maoni yangu

Tribunal:

Assessors' opinion read before the Tribunal in the presence of the Parties.

Order: Judgment on 20th August, 2021

Sgd: S.J.Mashaka

Chairman

10th August, 2021


Regarding consequence for failure to record the opinion properly, in the same case, the court stated further and I quote that:-

"In the case at hand, as already stated, the proceedings do not show whether the assessors gave their opinion. Under the law, it is as good as, assessors were not fully involved. This faulty alone is sufficient to nullify the proceedings of the trial tribunal..."[emphasis added]

In the present appeal therefore, since the Hon. Chairman failed to record the opinion of assessors in line with the guidance above, it is as if the assessors were not involved at all and as such the whole proceedings of the District Land and Housing Tribunal is a nullity.

From the foregoing observation this appeal therefore succeeds to the extent of nullifying the District Land and Housing Tribunal's proceedings in Appeal No. 09 of 2021 and as such the decision of the Ward Tribunal stands. If the appellant still wishes to pursue his rights of appeal against the decision by the Ward Tribunal, he can do so before a competent tribunal. Otherwise, there is no order as to costs.

It is so ordered.


A.Y. Mwenda
Judge

23.05.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Manjanja Lukamba the Appellant and in the presence of Mr. Charles Zacharia the Respondent.


A.Y. Mwenda
Judge

23.05.2023

