

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL NO. 55 OF 2022

(Arising from Bukoba District Land and Housing Tribunal in Application No. 197/2012 and High Court of Tanzania at Bukoba in Application No. 123/2021)

YUSTO EUSTACE----- APPELLANT

(Administrator of estate of Eustace Bashumika)

Versus

JOSEPHINA KAWEGERE----- RESPONDENT

(Administratrix of the Estate of the late Yulitha Kishura Kicholi)

JUDGMENT

Date of Judgment: 14. 02.2023

A.Y. Mwenda, J.:

Before the District Land and Housing Tribunal for Kagera at Bukoba, the respondent (the then Applicant) in the capacity of administratrix of estate of Yulitha Kishura Kacholi instituted a suit against the Appellant (the then respondent). She claimed, among other things, for declaration order that the suit land which was under the respondent occupation form part of the estate of late Yulita Tibaijuka Kishura and the order for vacant possession against the respondent.

After the trial of the matter, the Hon. Chairman allowed the application and granted the reliefs as prayed by the applicant.

Aggrieved by the Hon. Chairman's decision, the appellant preferred the present appeal. The same has five (5) grounds of appeal. For reasons which I am going to give hereafter, I found no reasons to reproduce the said grounds.

When the hearing of the present appeal was set, the appellant was present and at the same time, Mr. Alli Chamani appear for him. On the other part, Mr. Lameck John Erasto, learned counsel, appeared for the respondent.

Upon invitation by the court to submit in support of the grounds of appeal, Mr. Alli Chamani, informed the court that he is going to argue the first ground of appeal thereby abandoning the rest. The said ground reads as follows, that;

"1. That the trial tribunal exchanged assessors during the hearing of the respondent's evidence apart from not involving the assessors without assigning reason at the hearing of defence case, although the chairman ordered their opinion to be read at the conclusion of the hearing but are not on record despite of considering them in the judgment."

In his submission, Mr. Chamani submitted that at page 8 of the proceedings, assessors were ANAMERY and FORTUNATA but at page 18 assessors changed to MUYAGA and ANAMERY. The learned counsel further said that at page 29, when the defence hearing commenced, no assessors were involved. The learned counsel added in that at page 40 of the proceedings, the Hon. Chairman ordered opinion of assessors to be read, but the same was never recorded until the pronouncement of the judgment. The learned counsel said that it is however strange that in the course of writing judgment, the Hon. Chairman made reference to assessors opinion which was not proper. To support his argument he cited the case of SIKUZANI SAID MAGAMBO AND ANOTHER V. MOHAMED ROBLE, CIVIL APPEAL NO. 197 OF 2018 at page 9, 10 and 11. The learned counsel concluded his submission that the irregularity was fatal which vitiated the proceedings. He thus prayed the lower tribunal's records to be nullified.

On his part, the learned counsel for the respondent supported Mr. Alli Chamani's position. On top of what was submitted by Mr. Chamani, Mr. Lameck John Erasto said that even the recording of the quorum was not properly done. He said while at page 18 of the typed proceedings the names of assessors appear to be MUYAGA and ANAMERY, at page 21 they read different ie. FORTUNATA and Ms. ANAMERY. The learned counsel said that with the said change, it is not known what befell Mr. MUYAGA. On top of that, Mr. Lameck John Erasto submitted that at page 37 of

the typed proceedings there was no member who was in attendance and no reasons were assigned as to their whereabouts. The learned counsel concluded his submission by stating that these irregularities are incurable and the remedy available is to quash and set aside the proceedings.

That being the summary of the submissions by the learned counsels for the parties, this court is in all fours with them that the proceedings before the District Land and Housing Tribunal is tainted with illegality. From the records of the tribunal it is clear that the Hon. Members (assessors) were not fully involved. The law is clear ie. the Land Dispute Court's Act, [Cap 216 RE 2019] that the composition of the District Land and Housing Tribunal is fully constituted where the chairman sits with the aid of not less than two assessors. Section 23 (1) and (2) of the said Act, [Cap 216 RE 2019] reads as follows, that;

"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 dully 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 emphasis on the above provisions is provided for under Regulation 29 (1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 which provide thus;

"19 (1) The tribunal may, after receiving evidence and submissions under Regulation 14, pronounce judgment on the spot or reserve the judgment to be pronounced later;

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

The take away from the above is that the assessor should give his/her opinion after being involved in the hearing of the matter to the closure of the defence case. That means therefore an assessors who attends the hearing in pieces, cannot be in a better position to properly advice the chairman in his opinion as he/she missed some parts of the evidence. In the present matter therefore, since the record shows there was change of assessors from MUJAGA and ANAMERY to FORTUNATA and ANAMERY that means if ANAMERY gave out her opinion, then she missed part of evidence which was adduced in her absence, thus her opinion (if any) is as good as no opinion at all.

Guided by the above position, since in the present matter, the assessors were not fully engaged in the trial and they were not accorded room to give out their opinion, then this was a fatal irregularity that vitiated the proceedings. I thus hereby quash the proceedings and set aside the decision of the District Land and Housing Tribunal.

Each party shall bear its own costs.




A.Y. Mwenda
Judge

14.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Alli Chamani learned counsel for the Appellant and in the presence of Mr. Lameck John Erasto learned counsel for the Respondent.




A.Y. Mwenda
Judge

14.02.2023