

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

MISC. LAND APPEAL NO. 65 OF 2022

(Arising from the District Land and Housing Tribunal for Ngara at Ngara in Land Appeal No. 16 of 2021 and original Land Case No. 04 of 2021 from Kasulo Ward Tribunal)

GIBSON KIBOMBO APPELLANT

VERSUS

JANUARY WILLBARD RESPONDENT

JUDGMENT

*Date of Judgment: 09.02.2023
A.Y. Mwenda J,*

Mr. Gibson Kibombo the appellant, being dissatisfied with the judgment of the District Land and Housing Tribunal for Ngara at Ngara in Land Appeal No. 65 of 2022, preferred this appeal with four (4) grounds.

During the hearing of this appeal the appellant was represented by Mr. Raymond Laurent while the respondent enjoyed the legal services from Mr. Jovin Rutainulwa.

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 lack of assessors' opinion. As such during the hearing, the court directed the parties to only submit in that regard.

When invited to submit in that regard Mr. Raymond submitted that having gone through the tribunal's records and the judgment he noted illegality regarding lack of assessor's opinion. He submitted that it is trite law that before the judgment is delivered, assessors must give out their opinion and the said opinion should be reflected in the records. He said this is by virtual of section 23 of the Land Dispute Court Act and Regulation 19(2) of the Land Dispute (The District Land and Housing Tribunal) Regulation G.N 174 of 2003.

He submitted that at page 7 of the typed proceedings, on 28/04/2022 the matter was set for assessors' opinion and the said opinion was read to the parties but the same is neither reflected on the records nor in the judgment. He therefore concluded by submitting that the proceedings of the District Land and Housing Tribunal are nullity and they should be quashed and the judgment be set aside.

On his part, Mr. Jovin the learned counsel for the respondent conceded to the submissions by the learned counsel for the appellant and prayed this court to order re trial.

I have revisited the records and as it was rightly submitted by the learned counsels, the trial Tribunal's proceeding is tainted with illegality. At page 8 of the tribunal proceedings the Hon. Chairman recorded as follows and I quote;

"Baraza: Shauri linakuja kwa ajili ya kusomewa maoni ya wajumbe.

Wadaawa: Tupo tayari kupokea maoni.

Baraza: Maoni yamesomwa kwa wadaawa.

Amri: Hukumu 27/05/2022."

However, the records are silent as to whether the said opinion was read before the parties as the said opinion is not reflected in the records. Section 23 (2) of the Land Dispute Court's Act provide in a mandatory terms on the importance of observing the composition of the tribunal and the participation of assessors in the proceedings. This section states as follows;

"Section 23 (2) The District Land and Housing Tribunal shall be duly constituted when held by a chairman and two assessors who shall be require to give out their opinion before the Chairman reaches the judgment."[Emphasis supplied]

Regarding the above position, the Court of Appeal in the case of SIKUZANI SAID MAGAMBO & ANOTHER VS MOHAMED ROBLE CIVIL APPEAL NO. 197 OF 2018 (unreported) having reproduced section 23(1) and (2) of the Land Dispute Courts Act added to the effect that and I quote;

"In addition, Regulation 19 (1) and (2) of the Regulations impose a duty on a chairperson to require every assessor present at the conclusion of the trial

of the suit to give his or her opinion in writing before making his final judgment on the matter”.

Regarding consequences for failure to comply with the above provision the Court in the case of “SIKUZANI MAGAMBA” (supra) while citing AMEIR MBARAKA AND AZANIA BANK CORP. LTD VS EDGAR KAHWILI CIVIL APPEAL NO. 154 OF 2015 held that;

*“Therefore, in our own considered view, **it is unsafe to assume the opinion of the assessor which is not on the records 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.**” [Emphasis added]*

In the present appeal therefore since the Hon Chairman did not record the opinion of assessors it is therefore considered that no opinion of assessors was availed and read in the presence of the parties before the judgment was composed.

From the foregoing observations, this appeal succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal in Land Appeal No. 16 of

2021 and also any other order emanating therefrom is set aside. Any party interested to pursue his/her rights may do so before a competent tribunal. Otherwise, each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

09.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Raymond Laurent learned counsel for the Appellant and in the presence of Mr. Jovin Rutainulwa learned counsel for the respondent.




A.Y. Mwenda

Judge

09.02.2023