

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**LAND APPEAL NO. 58 OF 2022**

**SAKINA IDDI MAVERE..... APPELLANT**

**VERSUS**


**PAULINA JOSEPH FISSO..... RESPONDENT**

**JUDGMENT**

*15<sup>th</sup> day of August, 2023.*

**HASSAN, J.:**

This appeal stems from the decision of the District Land and Housing Tribunal (DLHT) for Kondoa at Kondoa in the Land Application No. 13 of 2020. Initially, the appellant herein instituted the Land application No. 3 of 2018, of which, its decision went against her favour. Aggrieved by the decision of DLHT, the appellant herein appealed to the high court, sitting under extended jurisdiction, the Resident Magistrate Court of Dodoma quashed the decision of DLHT and ordered for retrial *de novo* under new chairman and a new set of assessors. However, instead of opening the hearing on the same application (application No. 3 of 2018), a fresh



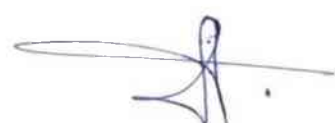
application was opened, that is, Land Application No. 13 of 2020. After full hearing before the DLHT, the appellant was yet again aggrieved by the decision of the tribunal. Furthermore, the appellant appealed to this court for remedy.

Today 15<sup>th</sup> day of August, 2023 the matter was called on for the hearing. However, before parties were invited to submit their case, the court *suo motu* observed some irregularities in the record of proceedings which are material to the outcome of the case involving injustice.

The error noted is to the effect that, assessors were not actively involved in the decision making in contravention of section 23 (2) of the Land Dispute Courts Act, Cap. 216. Also, that the chairman of tribunal sat with two members contrary to the order of the court (the Resident Magistrate Court of Dodoma with extended jurisdiction) delivered on 12/03/2020.

By noting that, I invoked the powers conferred upon this court under section 43 (1) (b) of the Land Dispute Court Act, [Cap. 216 R.E 2022] to revise the proceedings. Section 43 (1) (b) provides:

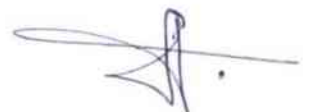
*"(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court—*



*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit."*

During hearing, parties were not represented by the counsel, thus, for being laymen, they decided to leave the matter to the court for determination.

To confront this issue, I begin by revising the position of the law which govern adjudication of land disputes before the DLHT. Thus, in terms of section 23 (1) of the Land Disputes Courts Act, the DLHT shall be constituted by the Chairman and two assessors and their role is articulated under subsection (2) whereby after the trial is concluded, they are mandatorily required to give out their opinions before the Chairman reaches the judgment. Therefore, a manner in which the assessors shall give their opinions is governed by Regulation 19 (2) of the Land Disputes



Courts (the District Land and Housing Tribunal (Regulations) 2003 which stipulates as follows:


*"19 (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 writing and the assessor may give his opinions in Kiswahili."*

Now, looking on the record of the case at hand, it is clear that no record was adjoined to form part of the proceedings showing that assessors were invited to give out their opinion. As for how the record of proceedings reveals, on 25/07/2022 when the matter was adjourned for assessors' opinion, opinion was not recorded in the face of the record, but, instead, what was transpired by the tribunal on the day was as follow:

***Baraza:***

***"Maoni ya wajumbe wa Baraza yamesomwa kwa wadaawa."***

Thereafter, the matter was adjourned and fixed for judgment and the same was delivered on the same date. Thus, no consideration was given for assessors to deliver their opinion. However, coincidentally I



came across a hand written two pieces of paper attached at the back pack of the file, of which, it seems to be the assessors' opinion.

Expectedly, to form part of the record, that opinion should have been recorded and read over to the parties soon after hearing of evidence was closed. Likewise, in my opinion, if the same were recorded in the separate sheets, it should have been admitted by the tribunal, and be endorsed to be part of the record. In my view, the undertaking should have been conspicuously indicated in the proceedings on the date set for assessors' opinion. Thereafter, it should be read over to the parties and the matter be set for judgment. It is worth noting that, in the appeal at hands, all these measures were not adhered.

Henceforth, apart from statutory guidance, there are number of authorities projecting on the same area. To mention a few, see **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 Of 2017** and **Edna Adam Kibona v. Absalom Swebe (Sheli) Civil Appeal No. 286 Of 2017** (both unreported). Adding to that, see also **Ameir Mbarak and Azania Bank Corp Ltd v. Edgar Kahwili, Civil Appeal No. 154 of 2015** (unreported), where faced with akin situation the Court held that:

*"...it is unsafe to assume the opinions of the assessors which is not on the record 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 opinions for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity."*

Moved from the above authorities, as I have mentioned before, it is apparent that assessors were not properly involved in the conduct of the DLHT. Their opinion were not recorded to form part of proceedings, and so, it cannot be said that the same was read over to the parties. Therefore, as the omission is fatal, the whole proceedings became worthless.


In the circumstance, I invoke the powers vested upon this court under section 43 (1) (b) of the Land Disputes Courts Act, Cap. 216 to fix the deficiency noted in the proceedings of the tribunal. To that end, I quash and set aside the proceedings, judgment and the subsequent orders meted out by the DLHT.

On the way forward, I remit the file to the DLHT of Kondoia for re-hearing of the Land Appeal No. 3 of 2018 in compliance with the order of the court delivered by the Resident Magistrate Court (with extended jurisdiction) on 12/03/2020. I make no order as to costs.

It is ordered.

**DATED** at **DODOMA** this 15<sup>th</sup> day of August, 2023.



  
**S. H. HASSAN**  
**JUDGE**