

IN THE HIGH COURT OF TANZANIA
DODOMA SUB-REGISTRY
AT DODOMA

LAND APPEAL NO. 87 OF 2022

*(Arising from Land Application No. 384 of 2017 before District Land and Housing Tribunal
for Dodoma at Dodoma)*

HARUNA CHALO.....1ST APPELLANT

MICHAEL LAZARO.....2ND APPELLANT

BIBIANA MCHETA.....3RD APPELLANT

ATHANASIO LAZARO.....4TH APPELLANT

VERSUS

EZEKIEL ISAKA CHALO (Suing as the Administrator of the Estate of the Late

ISAKA NOAH CHALO).....RESPONDENT

RULING

09th September & 2nd October, 2023

HASSAN, J:.

In the District Land and Housing Tribunal (DLHT), the respondent herein sued the appellants claiming to be a lawful owner of the disputed land located at Iweta Street within Dodoma City Council. The application was heard and decided in favour of the respondent. The Appellant being aggrieved with the said decision lodged this appeal on the following grounds: -

1. *That, the trial Tribunal erred in law and fact by deciding that the suit land is the property of the late Isaka Noha Chalo without considering that the suit land was the personal property of the 1st appellant since the life time of his late father before sold it to the 2nd, 3rd and 4th respondents herein.*
2. *That, trial Tribunal erred in law and law and fact by not visiting to the disputed land while there is a testimony that the land which the respondent claim is differ with that owned by the appellants.*
3. *That, the Tribunal erred in both law and fact by referring that the location of the suit premise is within Changómbe the fact which is untrue.*
4. *That, trial Tribunal erred in both law and fact by falling to make proper assessment and requisite evaluation of the evidence before it as a result arrived at erroneous decision.*
5. *That, trial Tribunal erred in both law and fact by decide the matter in favour of the respondent herein without take into consideration that the evidence adduced by the*

appellant side is heavy compared with that adduced by the respondent side which is weak and contradictory.

6. That, trial Tribunal erred in both law and fact by decide the matter in favour of the respondent herein without take into consideration that it is almost nine years since the 2nd, 3rd and 4th respondent sold the said land and there are extremely development made by the Respondent including the construction of permanently residential houses.

The matter was called on for the court deliberation on the 5th day of September, 2023. However, upon perusal of the proceedings the court discovered some irregularities in the record of proceedings from the DLHT which appeared to be material to the merits of the case involving injustice. The error noted is to the effect that, the assessors were not actively involved in the decision making by the chairman in contravention of section 23 (2) of the Land Dispute Courts Act, Cap. 216.

Both parties appeared in person without any legal representation so they left the matter to the court for it to decide on the anomaly observed.

The provision of the law under Section 23 (1) of the Land Disputes Courts Act, Cap 216 gives a mandatory requirement that the DLHT shall be constituted by a Chairman and two assessors and their role is



articulated under subsection (2) that is, after the trial is concluded, they are mandatorily required to give out their opinion before the Chairman reaches the judgment. The manner in which the assessors shall give their opinion 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 opinion in Kiswahili."

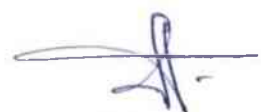
In the instant case, after the conclusion of hearing the suit, the trial Chairman set a date for assessors to opine on the 26th day of November, 2020. But the same was not done on that date. The record thereafter does not reflect that the assessors gave out their opinion in the presence of the parties after the closure of defence case. The written opinions of the assessors did however, find their way into the file in an unexplained way. Thus, due to that irregularity, the parties were prejudiced as they were not aware of existence of the assessors' opinion and the content

thereto. The provisions of Regulation 19 (2) of the Regulations were thus flouted.

Failure by the Chairman to require the assessors to state the contents of their written opinions in the presence of the parties rendered the proceedings a nullity. The court gave its guidance in the manner assessors opinion is to be given in the case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017** (unreported) the court held;

"We are increasingly of the considered view that, since Regulation 19 (2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict,"

See also the cases of **Sikuzani Said Magambo and Another v. Mohamed Roble, Civil Appeal No. 197 of 2018** and **Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017**



(both unreported). In the latter case, the Court observed as follows:

".....as a matter of law, assessors must fully participate and at the conclusion of evidence, in terms of Regulation 19 (2) of the Regulations, the Chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili: That opinion must be in the record and must be read to the parties before the judgment is composed."

In **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 by the above authorities, as I have mentioned before, it is apparent that assessors were not properly involved in the conduct of the DLHT. Their opinions were not read and recorded to form part of

proceedings, therefore, the omission was fatal and the whole proceedings become worthless.

I am aware that this case had been remitted back to the DLHT by this court on appeal (Mambi, J) for failure by the trial Chairman to give reasons for his departure from the assessors' opinion but the same opinion were not read in the trial Tribunal in presence of the parties hence the violation was fatal.

That said, I have been moved to invoke the powers vested to this court under section 43 (1) (b) of the Land Dispute Courts Act, Cap. 216 to fix the deficiency noted in the proceedings of the DLHT. Ultimately, I quash and set aside the proceedings, judgment and the subsequent orders meted out by the DLHT.

In the circumstance, I remit the file to the DLHT of Dodoma for trial *denovo* of the Land Application No. 384 of 2017 by another chairman and a new set of assessors.

It is ordered.

DATED at DODOMA this 2nd day of October, 2023.



S. H. HASSAN

JUDGE