

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**LAND APPEAL NO. 52 OF 2022**

*(Arising from the decision of District Land and Housing Tribunal for Bukoba in Application No. 12 of 2011)*

**BARNABAS KATONDO ..... APPELLANT**

**VERSUS**

**ALLY CHAMANI ..... RESPONDENT**

**JUDGMENT**

13<sup>th</sup> and 17<sup>th</sup> February, 2023

**BANZI, J.:**

In the District Land and Housing Tribunal for Kagera at Bukoba, (trial Tribunal) the Respondent, sued the Appellant and other nine persons who are not party to this appeal over a piece of land located at Omurushaka area within Karagwe District. After receiving the evidence of both sides, the trial Tribunal decided in favour of the Respondent by declaring him as the lawful owner of the suit land. Dissatisfied with the decision of the trial Tribunal, the Appellant lodged his appeal before this Court.

When the appeal was called for hearing, the Appellant enjoyed the services of Mr. Joseph Bitakwate, learned counsel whereas, the Respondent who is also an Advocate of the High Court appeared in person. Although the memorandum of appeal had three grounds, but with leave of this Court, parties argued the first ground only to wit:

*"That, the District Land and Housing Tribunal for Kagera at Bukoba erred in law in failing to invite the assessor(s) to give his opinions before reaching the judgment contrary to the law, making the whole proceedings and judgment of the Tribunal a nullity."*

Addressing the Court, Mr. Bitakwate submitted that, the trial Tribunal reached into the decision without giving the opportunity to assessors to give their opinion which is against the requirements of section 23 (2) of Land Disputes Courts Act [Cap 216 R.E. 2019] ("the Land Disputes Courts Act) and regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN No. 174 of 2003. He added that, although the Chairman at page 3 of the judgment referred to the opinion of assessors but there is no such opinion on the record and in the absence of such opinion, the entire proceedings become nullity. He supported his point by citing the case of **Edina Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 CAT (unreported). Mr. Bitakwate went further and pointed out another irregularity concerning change of assessors which invalidate the proceedings. In that regard, he prayed for this Court to invoke its revisionary powers under section 43 (1) (b) of the Land Disputes Courts Act and nullify the proceedings, quash the judgment and set aside the decree. On the way forward, he opined that, parties should be left at liberty to file a fresh suit if so interested.

The Respondent readily conceded to the irregularities pointed out by learned counsel for the Appellant. However, on the way forward, he had a different opinion that, the court should nullify the proceedings starting from 1<sup>st</sup> October, 2012 to 25<sup>th</sup> May, 2018 in order to remain with application/plaint for a re-trial. He further submitted that, since the irregularity was caused by Tribunal, each party shall bear its own costs as it was stated in the case of **Abdallah Hassani v. Juma Hamisi Sekiboko**, Civil Appeal No. 22 of 2007 CAT at Tanga (unreported).

I have considered the arguments of both sides alongside with the record of the trial Tribunal. It is worthwhile to underscore that section 23 (1) (2) (3) of the Land Disputes Act provides that:

*"(1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.*

*(2) The District Land and Housing Tribunal **shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.***

*(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if*

*any, may continue and conclude the proceedings notwithstanding such absence.”(Emphasis supplied).*

What I gathered from the provisions of the law above is that, for District Land and Housing Tribunal to be properly constituted, it requires; **one**, the Chairman to sit with at least two assessors; **two**, the involvement of assessors which gives them the mandate to give opinion before the chairman composes the decision of the Tribunal and **three**, at least one of the assessors must be among the assessors who must be in attendance throughout the trial. In the case of **Ameir Mbarak and Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 CAT (unreported) it was held that, consequences of unclear involvement of assessors in the trial renders such trial a nullity. In another case of **Cleoplace Kaiza v. Potence Mugumila**, Civil Appeal No. 378 of 2021 CAT (unreported) it was held that:

*“...it is a legal requirement under section 23 (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019 (the Land Disputes Act) which has been fortified by our decisions that **the assessors who sat at the commencement of the proceedings should be the same throughout till the end**. The provision also requires mandatorily for the assessors to give their opinion, which should be read before the parties and reflected in the Tribunal decision regardless of whether their opinion has been considered positively or negatively.”(Emphasis is mine).*

Returning to the matter at hand, after a thorough perusal of the record of trial Tribunal, I am constrained to agree with Mr. Bitakwate that, the proceedings before the trial Tribunal were tainted with irregularity to the extent of vitiating the entire proceedings. First and foremost, there was irregular change of assessors from commencement of trial to the end. The record shows that, the trial began with Mpanju and Kawegene. On 13/06/2013 when the case was called on for framing issues, the assessors were Mpanju and Makwaya. But on 08/04/2014 when AW1 (the Respondent herein) testified, there was new set of assessors namely, Nyakato and Bwahama. However, during the defence, in the course of testimony of DW1 to DW5, Nyakato was dropped and replaced by Anamery who was the new member and Bwahama who was present from the testimony of AW1. Apart from that, when DW6 testified, Bwahama was abandoned and in lieu Anamery and new member, Fortunata continued with the hearing. This shows that there was no clear involvement of assessors because the assessors were changing throughout the trial contrary to the law. In the case of **Cleoplace Kaiza v. Potence Mugumila** (*supra*), when the Court of Appeal encountered with similar situation of changing of assessors had this to say:

*"It is settled law that once trial commences with a certain set of assessors, no changes are allowed or even abandonment of those who were in the conduct of the trial."*

*The noted irregularity is fatal and has rendered the proceedings before the Tribunal a nullity..."*

Apart from that irregularity, Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, requires the assessors to give their opinions in writing before the Chairman composes his judgment. The opinions must be given in the presence of the parties as it was stated in the case of **Edina Kibona v. Absolom Swebe (Sheli)** (*supra*). In the instant matter, there is no written opinion in the file. Although the Chairman made reference to the opinion of assessor at page 3 of his judgment, but the proceedings do not reveal if the said assessor was accorded with opportunity to give his opinion as required by the law because after receiving the testimony of DW6, no date was set for the assessor to give their opinion. In the case of **Ameir Mbarak and Another v. Edgar Kahwili** (*supra*) it was underscored that:

*"Therefore, in our considered view, it is unsafe to assume the opinion of the assessor 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 opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity."*

From the above findings and analysis, what transpired at the trial Tribunal from unclear involvement of assessors because the assessors were changing throughout the trial to the moment of giving the opinion is a fatal irregularity which renders the proceedings before the trial Tribunal a nullity.

From the foregoing reasons, I invoke revisional powers under section 43 (1) (b) of the Land Disputes Courts Act and nullify the entire proceedings of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 12 of 2011, quash the judgment and set aside the decree dated 26<sup>th</sup> July, 2018. I hereby remit the case file to the trial Tribunal for matter to heard afresh before another Chairman and a new set of assessors. In the circumstances, each party shall bear its own costs.

It is accordingly ordered.



A handwritten signature in blue ink, appearing to read 'I. K. Banzi', is written over a horizontal line.

**I. K. Banzi**  
**JUDGE**  
**17/02/2023**

Delivered this 17<sup>th</sup> day of February, 2023 in the presence of the Applicant and the Respondent both in person.



A handwritten signature in blue ink, appearing to read 'I. K. Banzi', is written over a horizontal line.

**I. K. BANZI**  
**JUDGE**  
**17/02/2023**