

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB - REGISTRY**

**AT DODOMA**

**LAND APPEAL NO. 19 OF 2023**

*(Originating from Land Application No. 48 of 2021 of District  
Land and Housing Tribunal for Dodoma)*

**GAILE CHILONGANI .....1<sup>ST</sup> APPELLANT**

**PETER MAHIYA .....2<sup>ND</sup> APPELLANT**

**VERSUS**

**RICHARD PHILIP MBOGO ..... RESPONDENT**

**JUDGMENT**

***20.05.2024***

**HASSAN, J.:**

The appellants herein, one Gaile Chilongani and Peter Mahiya were aggrieved by the decision of the District Land and Housing Tribunal (DLHT) for Dodoma in the Land Application No. 48 of 2021 of which the respondent herein emerged victorious.

Upon exercising his right of appeal conferred under section 41 (1)(2) of the Land Disputes Courts Act, Cap. 216 R. E. 2019, the appellants preferred seven (7) grounds of appeal to be determined by the court.

However, for the reason to be apparent later, I will not relocate the said grounds of appeal hereunder.

Coming on 23<sup>rd</sup> April, 2024, the matter was called on for hearing. That being so, the appellants were absent, though they have enjoyed legal representation of learned counsel Ms. Josephine M. Paulo. Whereas, on the other side, the respondent entered presence himself unrepresented by counsel.

However, before the parties canvassed to their submissions, the court *suo motto* raised a legal point which can affect the validity of the proceedings. And it follows that the same form no part of the grounds of appeal earlier on lodged. Thus, the irregularity observed is whether or not assessors who form part of decision making were actively involved in the conduct of the tribunal. Seeing that, I invited the parties to address the court on the issue raised.

Therefore, owing to the circumstance, Ms. Paulo submitted that, it is true that after she went through the record of proceedings, she observed that, indeed, proceedings were flawed. That is, the chairman who presided over the tribunal had not appended his signature into the evidence of each

witness after he had recorded it. And that, the mischief is noted from the evidence of witnesses from both sides.

On the other hand, it is crystal clear that assessors who form part of the panel have not been properly involved in the conduct of the tribunal. On the context thereof, the record of proceedings is clear that, assessors' opinion was not recorded anywhere before judgment was delivered. Thus, in her view, the omission is fatal and indeed affects the validity of the proceedings.

In the end, owing to the consequences of the irregularities raised, the appellant's counsel prayed that, the court should nullify the entire proceedings, quash the judgment, and further, set aside the orders meted out by the tribunal.

On the other side, after having enough time for consideration of the issues raised, Mr. Richard Philip (the respondent herein) readily conceded to the fault, and thus, he eagerly joined hand to the appellants' counsel's prayers.

Based on the context, the legal issues which require determination of this court are, whether or not assessors were properly involved in the

decision making. And also, whether or not the chairman had appended his signature at the end of each witness's evidence which he has recorded.

Therefore, having gone through the records, starting with the second limb of the legal points raised, that is, the issue of assessors, it is obvious that each assessors' opinion is not visible in the record of proceedings in contravention of section 23 (1) and (2) of the Land Disputes Courts Act, [Cap. 216 R. E. 2002] which provide:

*"23 (1) The District Land and Housing Tribunal established under section 22 shall be composed of one 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."*

It appears that, from the dictum of section 23 (1) (supra), composition of the Tribunal constitutes a chairman sitting with not less than two (2) assessors. Again, section 23 (2) which has to be read together with Regulation 19 (2) of the Land Disputes Courts (District Land and Housing

Tribunal) Regulations, GN No. 174 of 2003 (the Regulations), of which, its requirement is that, after taking part in the conduct of the matter, all assessors are required to give their opinions in writing, and should be read out to the parties before the Chairman pronounces the decision which has incorporated those opinions. See for instance the decision in **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported), as well as in **Peter Makuri v. Michael Magwega**, Civil Appeal No. 107 of 2019 (CAT) Mwanza (unreported) where in this case the court stated that:

*“It is a mandatory legal requirement that in adjudicating land matters before the Tribunal, the Chairman sits with aid of assessors. The assessors sitting in, are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose decision of the Tribunal. **And all these must be reflected on record of proceedings.** Besides, where the Chairman disagrees with the opinion of the assessors, he must record reasons. **In the absence on record of the opinion of assessors, it is impossible to***

**ascertain if they did give any opinion for consideration** in composing the judgment of the Tribunal.”

And, looking on the case of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho**, Civil Appeal No. 21 of 2013, of which, the similar viewpoint was sustained by the court.

That said, by reflecting on the judgment, it is apparent that at page 10, without first being part of record, opinion of assessors was dispatched. Yet again, looking on the back part of the file, opinion of assessors were piled in a separate sheet. However, as earlier indicated, the same were not tendered, and further, be admitted by tribunal to form part of the proceedings. Similarly, the said sheets were not endorsed by the chairman. That being so, such opinion will have no effect to the matter. See for instance, the decision in **Ishfaque Shabir Yusufali vs Salim Lakhani & Others** (Civil Application No. 521/01 of 2022) [2023] TZCA 17786 (31 October 2023) Tanzlii. It was held:

*"On this, we are at one with Dr. Rwegasira and precisely aligning ourselves with the position in the*

*cases of **Japan International Cooperation Agency (JICA) and Total Tanzania Limited (supra)**, in which, we emphasized that, the document/s not admitted in evidence cannot form part of the record although found included on record. In the present case, since annexure P4 was never admitted in evidence it could not have been relied on either by the trial court or the Court on appeal.”*

In the circumstance, I hold the same view as above, that since the documents yielding assessors' opinion were not admitted, it cannot be made as part of the records thus, the same are disvalued altogether.

In this context, it goes without saying that, taking into account what has been discussed above, it is clear that the chairman has violated the principle buttressed in the case of **Peter Makuri v. Michael Magwega**, and that of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho** (supra), where it was stressed among other things that, assessors sitting in the tribunal are vested with mandate to participate by asking questions, giving opinion albeit in writing before the Chairman proceeds to compose

decision of the Tribunal. And all these, must be reflected on the record of proceedings.

Therefore, in my considered view, failure to record each assessor's opinion in the records of proceedings before judgment was composed is a serious slipup which nullify the whole proceedings. Thus, in so far as it stands, and guided by the above provisions and dispatched authorities, I hereby nullify the entire proceedings, quash the judgment and set aside the orders handed down.

Additionally, knowing that this point can suffice to dispose the appeal, I will not proceed to determine the second limb of the issue raised by the court. In the end, the application No. 48 of 2021 is remitted to DLHT of Dodoma for retrial by another chairman and new set of assessors. Each party to bear its costs.

Ordered accordingly.

**DATED** at **DODOMA** this 20<sup>th</sup> day of May, 2024.





A handwritten signature in black ink, appearing to read "H. Hassan".

**H. HASSAN**

**JUDGE**

**20/05/2024**

This Judgment delivered this 6<sup>th</sup> day of May, 2024 in the presence of the parties and the matter was ordered to start afresh under new panels.



A handwritten signature in black ink, appearing to read "S. H. Hassan".

**S. H. HASSAN**

**JUDGE**

**20/05/2024**