

IN THE HIGH COURT OF TANZANIA

DODOMA SUB - REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 78 OF 2020

*(Originating from Land Application No. 100 of 2019 of District
Land and Housing Tribunal of Singida)*

RICHARD KITUNDU.....1ST APPELLANT

HAMISI SHIPU.....2ND APPELLANT

VERSUS

BATHOLOMEO BENJAMINI ULENGO (as the administrator of

estate of the late Benjamini Kingu Mpopo 1ST RESPONDENT

JUDGMENT

06.05.2024

HASSAN, J.:

Mr. Richard Kitundu and Mr. Hamisi Shipu, the appellants herein altogether have been pained by the decision of the District Land and Housing Tribunal (DLHT) for Iramba at Kiomboi in the Land Application No. 78 of 2020 of which, the respondent emerged triumphant.

Now before this court, the appellants preferred three (3) grounds of appeal for resoluteness as follows:

1. *"That the trial chairman erred in law and facts by deciding the case without the opinion of assessors.*
2. *That the trial tribunal erred in law and facts by not considering the argument given by the appellants and based its decision on the weak and contradictory argument of the respondent and his witness.*
3. *That the trial tribunal erred in law and fact by deciding in favour of the respondent while he did not prove that he is the legally elected administrator of estate of the late Benjamini Kingu Mpopo."*

Thus, upon those grounds, the appellants pray the court to allow the appeal and quash the decision of the trial tribunal and finally set aside the order thereto with costs. However, in response, the respondent replied to the appeal and on that, he also raised a point of preliminary objection of which, for the reason to be apparent soon, I will not imitate the same.

After this appeal has gone through some ups and downs, of which, I feel not obliged to go into much details. Notably, involving the Application No. 40 of 2021, and also, the Application No. 79 of 2022 which stomached out of this appeal. Now, coming on 6th May, 2024, the matter was called on

for hearing. That being so, the appellants were personally absent but they were enjoying legal representation of learned counsel Mr. Simon Mcharo who was himself present. Whereas, on the other side, learned counsel Mr. Erck Christopher was present holding brief of learned counsel Mr. Onesmo David with instruction to proceed.

In the first hand, the respondent's counsel readily came up and withdrew his preliminary objection and moving forward, he right away conceded to the first ground of appeal. Thus, in his short and clear submission, learned counsel Christopher submitted that, indeed assessors were not properly involved in the conduct of the tribunal for failure to deliver their opinion. He cemented that, according to section 23 (1) and (2) of the Land Disputes Courts Act, [Cap. 216 R. E. 2002], and regulation 19 (1) (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003, assessors are required to give their opinion which should be recorded to be part of proceedings.

Reflecting to the instant case, he submitted that, although assessors were present during trial, they did not give their respective opinion. He further averred that, looking on the judgment, it is unveiled that assessors' term had expired, hence, they could not deliver their opinion. However, that

fact does not appear in the proceedings. And thus, in his view, that flaw went to the root of the matter. And alone, this ground suffices to nullify the entire proceedings, quash the judgment and set aside the orders meted. Furthermore, he prayed for each party to bear its costs.

On the other side, learned counsel for appellants, Mr. Mcharo had nothing to add, but rather to join hand to the earlier submission fronted by the respondent's counsel, and leave the matter for determination of the court.

At the end, the legal issue which require determination of the court is, whether assessors were properly involved in the decision making upon the conduct of the trial tribunal.

Therefore, having gone through the records, it is obvious that each assessor's opinion was 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]. This section provides:

" 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."

Thus, from the provision of section 23 (1), composition of the Tribunal has been counted to be mandatorily, a chairman sitting with not less than two (2) assessors. And, as for section 23 (2) which has to be read together with Regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN No. 174 of 2003 (the Regulations), the 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 also decision in **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported) and the decision in the case of **Peter Makuri V. Michael Magwega**, Civil Appeal No. 107 of 2019 (CAT) Mwanza (unreported), while the court pressed the same issue of assessor's participation in the decision making, it had this to say:

*“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 the case of **Emmanuel Christopher Lukumai v. Juma Omari Mrisho**, Civil Appeal No. 21 of 2013, where the similar viewpoint was upheld by the court.

That said, by reflecting on the case at hand, I am in the similar view with the counsel from both sides that, to appear in the judgment, without first being part of record, the reason that assessors' term of service had

expired, has no logic. Worth enough, up to the end, the records shows that assessors were in attendance of the tribunal's trial.

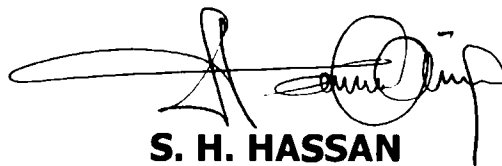
Thus, it goes without saying that, in the circumstance, it is clear that the chairman has violated the principle buttressed in the case of **Peter Makuri V. Michael Magwega**, and that of **Emmanuel Christopher Lukumai V. Juma Omari Mrisho** (supra), where it was stressed among other things that, assessors 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 blunder 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, I order that, the application No. 78 of 2020 be remitted to the DLHT of Iramba at Kiomboi for retrial by another chairman with new set of assessors. That said, I make no order as to costs.

Ordered accordingly.

DATED at DODOMA this 6th day of May, 2024.

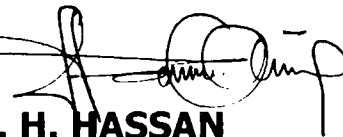
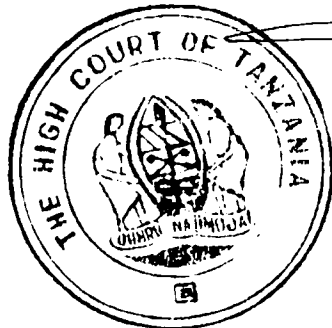


S. H. HASSAN

JUDGE

6/05/2024

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



S. H. HASSAN
JUDGE
06/05/2024