

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

**DODOMA DISTRICT REGISTRY**

**AT DODOMA**

**MISC. LAND APPEAL CASE NO. 11 OF 2022**

*(Arising from the decision of the District Land and Housing Tribunal for Kondoa at Kondoa in Land Appeal No. 52 of 2021, Original Mrijo Ward Tribunal Land Case No. 2 of 2021)*

**ISSA SWALEHE MTAWAZI.....APPELLANT**

**VERSUS**

**BAKARI HAMIS KIMWAGA.....RESPONDENT**

**RULING**

*Date of last Order: 7/2/2024*

*Date of ruling: 27/2/2024*

**KHALFAN, J.**

Parties herein had a land dispute which was referred for adjudication before the Mrijo Ward Tribunal (hereinafter referred to as the trial tribunal). After hearing the matter, the trial tribunal decided in favour of the respondent. The appellant was aggrieved hence preferred an appeal to the District Land and Housing Tribunal for Kondoa (the DLHT) which upheld the decision of the trial tribunal.

The appellant was aggrieved with the decision of the DLHT; hence he preferred the instant appeal with five grounds of appeal which I will not reproduce them here for the reason that will be apparent shortly.



It is on the record that this court ordered the appeal to be disposed of by way of written submissions the order which was complied with by the parties. In the course of composing the judgment, and having gone through the record, it came into my attention that on 19/11/2021 was the date fixed for the assessors to read their opinion before the parties. But the record is silent whether the said opinion was read. Hence, I invited the parties to address the court on the said anomaly and the way forward.

Responding to the issue raised by the court, Mr. Ayubu Suday, learned advocate for the appellant, argued that, it is the requirement of the law under Regulation 19 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation GN No. 174 of 2003 (hereinafter referred to as the regulations), which stipulates that the chairman before delivering a judgment he is supposed to invite the assessors to give their opinion and have it read.

He argued that since the opinion was not read, there was noncompliance with regulation 19 (1) of the regulations. He maintained that the judgment becomes a nullity by not complying with the law. He urged the court to nullify the judgment from the trial tribunal.

A handwritten signature in blue ink, appearing to be 'A. H. A. F.', is located in the bottom right corner of the page.

On his part, the respondent who appeared in person argued that the procedure was complied with by the trial tribunal.

Having gone through the parties' arguments in respect of the issue raised above, it is not in dispute that 19/11/2021 was the date fixed for the assessors to read their opinion. But as hinted before, the record is conspicuously silent as to whether the opinion was read as ordered.

In terms of section 23 (1) of the Land Disputed Courts Act [CAP 216 R.E 2019], (hereinafter referred to as the LDCA), the trial tribunal was required to sit with not less than two assessors. In terms of section 23(2) of the LDCA, the assessors are required to give their opinion before the judgment is delivered. The form of giving the assessors' opinion has been stated under regulation 19 (2) of the regulations which reads:

*"Notwithstanding sub-regulation (1) the chairman shall, before making his judgment require every assessor present at the conclusion of hearing to give his opinion in writing and the assessor may give his opinion in Kiswahili."*

The effect of failure to record and read out the assessors' opinion was stated in the case of **Peter Makuri v. Michael Magwega**, Civil Appeal No. 107 of 2019 (unreported) in the following terms:



*"Failing to **request/receive, read out to parties**, and consider the assessors' opinion in the Tribunal decision as is the case in the instant case, regardless whether the chairman agreed or not with the opinion, is a fatal omission that goes to the root of the matter, consequently vitiating the proceeding."*[Emphasis added]

In **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No. 287 of 2017(unreported), cited in **Edina Adam Kibona v. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017 (unreported), the Court of Appeal of Tanzania while dealing with an akin situation had this to say:

*In view of the settled position of the law, where the trial has to be conducted with the aid of the assessors, ... they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed... 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" [Emphasis added]**

The similar position was also underscored by the Court of Appeal in **Emmanuel Oshoseni Munuo v. Ndemaeli Rumishaeli Massawe**, Civil Appeal No. 272 of 2018 Court of Appeal of Tanzania at Arusha (unreported).

In the instant matter, since the record is silent as to whether the assessors' opinions were read out in the presence of the parties; no doubt there was unclear involvement of assessors. In the case of **Ameir Mbarak and Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 (unreported), the Court of Appeal succinctly pointed out that:

*"The consequences of unclear involvement of assessors in  
the trial renders such trial a nullity."*

Hence, with respect to the respondent, the record must indicate that such requirement was complied with. Since in the instant matter the record does not indicate whether the assessors' opinion was read in the presence of parties, the trial was vitiated.

As to the way forward, the learned advocate for the appellant urged the court to nullify the judgment of the DLHT. But he never said anything on





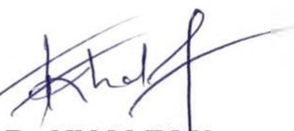
the way forward. In the instant matter, since the defect was in respect of the delivery of the assessor's opinion, the proceedings are spared. I therefore quash and set aside the decision of the DLHT and order the matter be remitted before it for compliance with the law. For the interest of justice, the matter should be placed before another chairperson with the same assessors and new judgment be composed.

Since the point was raised by the court *suo motu*, I will not make an order as to costs.

It is so ordered.

**Dated at Dodoma this 27<sup>th</sup> day of February 2024**



  
**F. R. KHALFAN,**  
**JUDGE**  
**27/2/2024**