

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

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 124 OF 2018

*(Arising from the decision of the District Land and Housing
Tribunal for Morogoro in Land Appeal No. 186 of 2016 (Hon.
Makwandi, Chairman))*

DAUD HAMISI1ST APPELLANT

YOUNUS MFANGAVO2ND APPELLANT

SHABANI KARAMA3RD APPELLANT

VERSUS

PASCAL CASSIANRESPONDENT

JUDGMENT

MAIGE, J

This appeal is against the decision of the District Land and Housing Tribunal for Morogoro ("the trial tribunal") in Land Application No. 186 of 2016 wherein a dispute as to the ownership of Farm No. 78 Wami, Luhindo within Morogoro Region ("the suit property") was resolved in favour of the respondent. Being aggrieved, the appellants instituted this appeal doubting the decision of the **trial tribunal** on 23 grounds. In essence, the said grounds raise three main issues. **First**, whether the **trial tribunal**

correctly assessed and applied the evidence. **Two**, whether the documentary evidence were properly admitted. **Three**, whether the **trial chairperson** considered extraneous facts in resolving the dispute.

At the hearing, the appellants were represented by Miss. Zainabu Mwatawala, learned advocate and the respondent by Mr. Mafuru, learned advocate. The arguments for and against the motion were made by way of written submissions.

As I was composing the judgment, I entertained a doubt if the judgment and proceedings of the **trial tribunal** were not guilty of fatal irregularities. Though it is suggestive in the judgment that, the opinions of assessors were taken into consideration, there is no indication in the proceedings if the said opinions were given. That being a fundamental issue of law, I found it imperative to afford the parties opportunity to address the Court thereon. That was done by way of supplementary written submissions.

Remarking on the issue, Miss Mwatawala was of the contention that, in as much as they were not read in the presence of the parties, the opinions of the assessors were unworthy of being considered. She concluded therefore that, sections 23(2) and 24 of the Land Disputes Courts Act, Cap. 2016, R.E.2002 ("the LDCA"), were not complied.

Mr. Mafuru appeared to share the same view. He submitted that, while regulation 19(2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002 G.N. 174/2003 ("the Regulations") as judicially considered in **Sunshine Mining Ltd v. Salum Said Ally, Land Appeal No. 198/2017, High Court Land Division** and **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017 (CAT-Unreported)**, requires the trial chairperson to, before pronouncing the judgment, call the assessors to give their opinions, in this matter the requirement was not complied with.

I entirely subscribe to the counsel's concurrent opinions. Since the composition of the District Land and Housing Tribunal is a chairperson and two assessors, the assessors' presence in the proceedings and consideration of their opinions under section 24 are so fundamental that if not complied with the judgment and proceedings thereof become null and void. Therefore, in **Bukindula Bwile vs. Busanda Makono & Others, Land Appeal No. 137 of 2015 (HC, Mwanza-Unreported)** it was held:-

*In the circumstance, I entertain no doubt that; the mandatory provisions of sections 23 (1) and 24 of the Land Disputes Court Act, Cap. 216, R.E, 2002 ("LDCA"), were not complied with by the **trial tribunal** in the conduct of the suit. In the express provisions of the sections just referred, assessors constitute the composition of the District Land and Housing Tribunal. Their presence in the proceedings and their final opinions to the trial tribunal is a condition precedent for there being a valid decision of the tribunal.*

In this matter, whilst the presence of the assessors during evidence taking is not doubted, their involvement in giving opinions is approvingly suspicious. Indeed, the proceedings do not speak of there being opinions of assessors. The opinions appear for the first time in the judgment. Nonetheless, they had never been read out in the presence of the parties as the law requires. In my view, that was a clear violation of the mandatory requirement of section 24 of the **LDCA** read together with regulation 19 of the **Regulations** which in effect require such opinions to be read out in the presence of the parties. The essentiality of the opinions of the assessors being read out in the presence of the parties has been stated consistently in a number of judicial pronouncements. For instance, in **Edina Adam Kibona v. Absolom Swebe Civil Appeal No. 286 of 2017, CAT (Unreported)**, it was observed:-

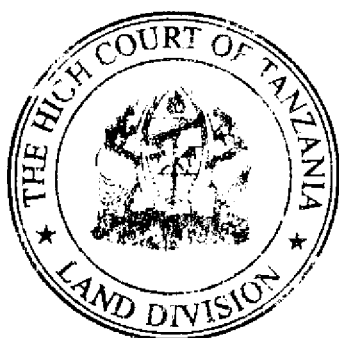
For the avoidance of doubt, we are aware that in the instant case the original record has the opinions of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in view of the fact that the record does not show that the assessors were required to give them, we fail to understand how and at what stage they found their way in the court record. And in further view of the fact that they were not read in the presence of the parties before the judgment was composed, the same have no useful purpose.

A similar position was recapitulated in **Sikuzani Saidi Mgambo and another vs. Mohamed Roble, Civil Appeal No. 197 of 2018** where it was held that;-

It is also on record that, though the opinion of the assessors were not solicited and reflected in the Tribunals' proceedings, the chairperson purported to refer to them in his judgment. It is therefore our considered view that, since the record of the Tribunal does not show that the assessors were accorded the opportunity to give to give the said opinion, it is not clear how and at what stage the said opinion found their way in the Tribunal's Judgment.

Armed with the above authorities, it is my considered view that, there being no evidence on the record suggesting that the said assessors were required to give their opinions in the presence of the parties, the opinions upon which the trial chairperson placed reliance "have no useful purpose". Consequently, the judgment and proceedings of the **trial tribunal** are null and void. I henceforth invoke my revisional power under section 43 (2) of the **LDCA** and nullify the Judgement proceedings of the **trial tribunal**. Since the motion was raised by the Court itself, I will not give an order as to costs. Accordingly, the judgment of the **trial tribunal** is hereby set aside and the proceedings thereof quashed without an order as to costs. The file is hereby remitted to the trial tribunal for retrial *denovo* before another chairperson and a new set of assessors.

It is so ordered accordingly.



MAIGE.I
JUDGE
15/05/2020

Date: 15/05/2020

Coram: Hon. C. Tengwa - DR

For the 1 st Appellant	}	Present in person
For the 2 nd Appellant		
For the 3 rd Appellant		

For the Respondent: Alfred Advocate

RMA: Bukuku

COURT:

Judgment delivered through video conferencing in the presence of the appellants, respondent and Advocate Alfred.




C. Tengwa

DEPUTY REGISTRAR

15/05/2020