

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**Land Appeal No. 178 of 2018**

(Arising from the decision of the Temeke District Land and Housing  
Tribunal at Temeke in Land Application No. 32 of 2017)

**HAWA RAMADHANI ..... 1<sup>ST</sup> APPELLANT**

**GODWIN MJELWA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**WALTER LEORNAD TERRY ..... RESPONDENT**

**JUDGEMENT**

**S.M. KALUNDE, J:**

Through Land Application No. 32 of 2017 filed before the Temeke District Land and Housing Tribunal at Temeke ( "**the Tribunal**"), WALTER LEORNAD TERRY ("**the respondent**") successfully sued the appellants, one HAWA RAMADHANI and GODWIN MJELWA. The appellants were aggrieved by the decision of the tribunal and filed the present appeal wherein they preferred five (5) grounds:

- 1. That the trial Tribunal erred in law and facts by failure to give the reasonable ground for refusing the assessors opinion.*
- 2. That, the trial Tribunal erred in law and facts by failure to consider that there is no any land owned by the respondent nearby the land in dispute as all nearby land is own by other people.*

- 3. That the trial tribunal erred in law and facts by failure to record the tendered evidence clearly and analysing it, and this has led to unjust decision.*
- 4. That the trial Tribunal erred in law and facts to order the demolition of 1st appellant's House though the respondent had no evidence proving his case.*
- 5. That, the trial Court erred in law and facts by ordering the Cost respondent without any justifiable reason for such.*

On being served with the Memorandum of Appeal the respondent filed a Reply to the Memorandum of Appeal resisting the grounds the appeal. Further to that, the respondent prayed for dismissal of the appeal and wanted this Court to uphold the decision of the tribunal.

With leave of the Court the appeal was argued by written submissions. All submissions were filed in accordance with scheduling orders issued by the Court.

The records before the tribunal show that the application before the trial tribunal were conducted with the aid of assessors in accordance with section 23 of **the Land Dispute Courts Act, Cap. 216 R.E. 2019**. The position of the law is that when the tribunal sits with the aid of assessors, the assessors should be afforded an opportunity to readout their opinions before the judgement is delivered. The requirement is set out under section 23(2) of Cap. 216. The section reads:

*"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.**" [Emphasis Mine]*

The position is also amplified by regulation 19(2) of the **Land Dispute Courts Act (District Land and Housing Tribunal) Regulations, 2002, G.N. 174 of 2003**. The regulation states that:

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

Whilst composing the present judgement it came to my attention that there is no record that before the Chairperson had delivered his judgement, the on to deliver their opinion in accordance with the above provisions. Admittedly, the Chairperson, at page 6 of the judgement referred to the opinion of **Mr. Kantabula** who was present at the conclusion of the trial as **Mr. Mwaisengera's** tenure had expired.

In accordance with the records, the respondent closed their case on 12<sup>th</sup> September, 2018 and the Court ordered that the judgement will be delivered on 25<sup>th</sup> October, 2018. On 25<sup>th</sup> October, 2018 the judgement was not ready thus the matter was adjourned to 05<sup>th</sup> November, 2018. The assessors did not attend. Records are silent on what happened on 05<sup>th</sup> November, 2018. Subsequently, on 16<sup>th</sup> November, 2018 the matter was adjourned to 19<sup>th</sup> November, 2018

when the judgement was finally delivered. Neither of the assessor attended on 16<sup>th</sup> November, 2018 nor on 19<sup>th</sup> November, 2018. This Court has established that the assessors did not give out their opinion as required by law.

I am aware that the records of the tribunal have the opinion of one of the assessors which was cited at page 6 of the typed judgement. In absence of the record that the opinion was read out in the presence of the parties, it is hard to fathom how the same found their way into the tribunal records sufficient to be cited in the judgement. I hold a view that the failure to give assessors an opportunity to read their opinion meant that the opinion was not part of the records of the tribunal and assessors were not involved as envisaged by law. I am supported in this view by the decisions of the Court of Appeal in **Tubone Mwambeta vs. Mbeya City Council**, Civil Appeal No. 287 of 2017 (unreported) and **Edina Adam Kibona vs. Absolom Swebe**, Civil Appeal No. 286 of 2017 CAT (Unreported).

In **Edina Adam Kibona vs. Absolom Swebe (supra)** the Court had the following to say:

*"We wish to recap at this stage that the trials before the District Land and Housing Tribunal, as a matter of law, assessors must fully participate and at the conclusion of evidence, it terms of Regulation 19 (2) of the Regulations, the Chairman of the District Land and Housing Tribunal must require every one of them to give his opinion in writing. It may be in Kiswahili. **That opinion must be in the record and must be read to the parties before the judgment is composed.**"*



*For the avoidance of doubt, we are aware that in the instant case the original record has the opinion 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.***" [Emphasis Mine]

The failure to involve assessors is a fatal irregularity which vitiates the proceedings before the tribunal. I invoke my revisional powers under section **43 (1)(b) of Cap. 216** and nullify the whole proceedings before the tribunal. I also quash and set aside the judgment and decree of the tribunal in Land Application No. 32 of 2017.

Parties may file a new application before another Chairman with a new set of Assessors. Each party is to bear its costs.

It is so ordered.

**DATED at DAR ES SALAAM this 04<sup>th</sup> day of September, 2020.**

  
  
**S.M. KALUNDE**  
**JUDGE**