

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 05 OF 2019

(Originating from the Decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Case No. 39 of 2017 and Kasanga Ward Tribunal in Land Case No. 1/2017)

ZAINABU RAJABU APPELLANT

VERSUS

MUSA JUMA RESPONDENT

Date of last Order: 07/12/2020
Date of Judgment: 23/12/2020

JUDGMENT

C.P. MKEHA, J

The present appeal traces its origin from Kasanga Ward Tribunal before which the appellant sued the respondent for trespassing over the disputed land. At the end of trial the appellant emerged the winner. The respondent appealed to the District Land and Housing Tribunal which reversed the Ward Tribunal's decision. The District Land and Housing Tribunal found that the respondent had been owning the suitland for more than twelve years since 1987 hence his long stay ought not be disturbed. The learned Chairperson concluded his

decision in the following words: " I join hands with the assessors to hold that, the appellant (Musa Juma) is a lawful owner of suitland." Thus, the appellant's victory before the Ward Tribunal was overturned. The appellant was not satisfied with the decision of the first appellate Tribunal hence, the present appeal. The appeal consists of three grounds of appeal as hereunder:

1. That, the appellate tribunal erred in law for setting aside the correct judgment of the Ward Tribunal without reasonable cause.
2. That, the appellate Tribunal erred in law by invoking adverse possession (long stay in land) while the Respondent alleged to purchase the land; which he failed to prove by documents.
3. That, the District Land and Housing Tribunal held that the appellant left the land unattended while the witnesses testified that the land in dispute has been under care of her mother.

Despite the fact that the respondent was served, he never appeared for hearing of the appeal. As such, the appeal was heard in his absence. When the appellant was invited to argue the appeal, she merely adopted all the grounds of appeal. She added that, before the District Land and Housing Tribunal, the assessors did not opine.

The only issue for determination is **whether the gentlemen assessors did give their respective opinion before the District Land and Housing Tribunal**. As indicated earlier in this decision, it was the finding of the

learned Chairperson that, the respondent had been owning the suitland for more than twelve years since 1987 hence his long stay ought not be disturbed. And, in view of the learned Chairperson, that was also the view by the assessors who opined that the respondent (Musa Juma) was the lawful owner of the suitland.

It was the appellant's complaint that, the assessors did not actually opine before the District Land and Housing Tribunal. Indeed, the typed proceedings of the first appellate Tribunal justifies the appellant's complaint. Neither does the record indicate that the assessors were actually invited or instructed to bring their written opinions before the Tribunal, nor is it indicated whether their respective opinions were read to the parties before delivery of the Tribunal decision. Section 23 (1) and (2) of the Land Disputes Courts Act, Cap 216 is couched in mandatory terms as hereunder:

" (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 opinions before the Chairman reaches the judgment."

Again, Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 imposes a duty upon the Chairman to

require assessors to give opinions in writing before a judgment is made. The relevant provision 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."

Before the District Land and Housing Tribunal hearing of the appeal was concluded on 17/01/2018. After conclusion of the said hearing, the learned Chairperson recorded the following:

"Tribunal: Let, us fix date for judgment

Order: Judgment be on 11/04/2018

Sgn

Chairperson
17/1/2012"

Then on 11/04/2018, immediately after insertion of the Tribunal's quorum of the day, the learned Chairperson recorded the following:-

"Tribunal: The case is for judgment. The same is delivered.

Sgn

CHAIRPERSON
11/4/2018"

See: pages **5** to **6** of the typed proceedings of the Appellate Tribunal.

From the quotations hereinabove, it is therefore correct that the Chairperson did not require the assessors who were present at conclusion of hearing to give their opinions in writing. Neither does the record indicate that, any such opinions which the Chairperson appeared to agree with, were read in the presence of the parties before delivery of judgment.

In the case of **Ameir Mbarak and Azania Bank Carp Ltd V. Edgar Kahwili, Civil Appeal No. 154 of 2015 (Unreported)**, in a situation similar to the instant one, the Court of Appeal had the following to say:

"Therefore in our considered view, it is unsafe to assume the opinion of the assessor which is not on the record by merely reading the acknowledgement of the Chairman in the judgment. In the circumstances, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the Tribunal's judgment and this was a serious irregularity."

In the case of **Tubone Mwambeta v. Mbeya City Council, Civil Appeal No. 287 of 2017 (Unreported)** the Court of Appeal gave instructive words as hereunder:

"In view of the settled position of the law, where the trial has to be conducted with the aid of 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."

See also: 1. The General Manager Kiwengwa Stand Hotel v. Abdallah Said Musa, Civil Appeal No. 13 of 2012 (Unreported) 2. Edina Adam Kibona v. Absolom Swebe (Sheli), Civil Appeal No. 286 of 2017 (Unreported)

For failure of the learned Chairperson to conform with the mandatory provisions of the law as demonstrated hereinabove, the proceedings and judgment of the appellate Tribunal are nullified. The decree and orders issued by the District Land and Housing Tribunal are set aside. I proceed to order fresh hearing of the appeal before another Chairperson and new set of assessors. Appeal partly allowed.

Dated at **SUMBAWANGA** this 23rd day of DECEMBER, 2020.




C.P. MKEHA

JUDGE

23/12/2020

Court: Judgment is delivered in the presence of the appellant in person.




C.P. MKEHA

JUDGE

23/12/2020

Court: Right of appeal explained.




C.P. MKEHA

JUDGE

23/12/2020