

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISCELLANEOUS LAND CASE APPEAL NO. 91 OF 2018**

**SOPHIA DICKSON MATARA ..... APPELLANT**

**VERSUS**

**JUMA KASIM KITONGO ..... RESPONDENT**

**(Appeal from the decision of the District Land and Housing  
Tribunal for Kinondoni District at Mwananyamala)**

**Dated the 14<sup>th</sup> day of April, 2018**

**in**

**Appeal No. 75 of 2017**

**JUDGMENT**

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

This is an appeal originating from decision of the Wazo Ward Tribunal (herein "**the Tribunal**") in **Case No. 83 of 2017**. At the tribunal, the respondent claimed a piece of land equivalent to ten (10) feet which was agreed as a road when he bought a piece of land from the appellants' husband. The Tribunal decided in favour of the respondent. The appellant was aggrieved by the decision of the ward tribunal, he filed an appeal before the District Land and Housing Tribunal for Kinondoni District at Mwananyamala (herein "**the DLHT**").

The appeal at the DLHT was registered as **Land Appeal No. 75 of 2017**. Upon hearing of both parties and deliberation, the

DLHT dismissed the appeal with costs. Undeterred, the appellant filed the present appeal wherein he preferred seven grounds of appeal and his appeal be allowed and quash the decision of the DLHT.

Leave was granted for the appeal to be argued by way of written submissions. Submissions of the appellant were drawn *gratis* by **Tanzania Women Lawyers Association** and filed by the appellant. On the other hand, the respondent drew and filed his own submissions.

Before composition of the judgement I noted that the judgment of the DLHT made reference to the opinion of assessors. The two assessors who allegedly participated in the hearing of the appeal were **Prof. Satiel Kulaba** and **Madam Monica Kimwaga**. However, upon a careful surveillance of the records of the DLHT, the said assessors never featured in any record of attendance, that is quorum. Further to that, it was not indicated whether the Chairperson required them to read their opinions before delivery of the judgment as required by law.

The issue raised by the Court *suo motu* is based on the requirements of section 23 (1) and (2) of **the Land Disputes Courts [Cap. 216, R.E. 2019]** read together with regulation 19 (1) and (2) of **the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002, G.N. 174 of 2003**. The section reads:

*"23-(1) The District Land and Housing Tribunal established under section 22 shall be*

*composed of at least a 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.** [Emphasis mine]*

The position under section 23 (2) of Cap. 216 is further amplified under regulation 19(2) of 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]*

In terms of the above cited provisions of the law, the DLHT is properly constituted by a Chairperson and at least two assessors. In amplifying the requirement to sit with assessors during appeal section **34 (1) of Cap. 216**, requires the DLHT to sit with two assessors when hearing appeals from the ward tribunal. For ease of reference the section states:

*"34 (1) **The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors and shall...**" [Emphasis mine]*

On top of that, the law obliges the Chairperson of the DLHT to require every assessor present at the conclusion of the hearing to give his opinion in the presence of the parties.

In the present case there is no records showing that the DLHT ever sat with the aid of assessors, let alone their names being mentioned. In accordance with the records the matter was called on twice and then fixed for judgment.

The records shows that, first time the matter came for mention on 09<sup>th</sup> August, 2017 none of the parties or any assessor was present. Subsequently, on 05<sup>th</sup> September, 2017 the DLHT gave orders that the appeal be disposed by way of written submissions. On the day, the appellant was present, and the respondent had a legal representation. However the records do not show whether any of the assessors mentioned in the judgment was present. The mater was adjourned to 23<sup>rd</sup> October, 2017 for mention. It would appear parties complied with the schedule to file written submissions, as a result on 23<sup>rd</sup> October, 2017 the DLHT fixed 21<sup>st</sup> February, 2018 to be a date for judgment. Judgment was then delivered on 31<sup>st</sup> May, 2018.

There is also no records demonstrating that, the Chairman required the assessors to readout their opinion as required by section 23 (2) of Cap. 216 and regulation 19(2) of G.N. 174 of 2003. Surprisingly, in his judgment the Chairman made reference to the opinion opined by the two assessors, that is, the opinion of **Prof. Satiel Kulaba** and **Madam Monica Kimwaga**. Part of the decision of the DLHT read:

*"I entirely agree with the opinion of my wise assessors Prof. Satiel Kulaba and Madam Monica Kimwaga that this appeal is hopeless."*

However, in the circumstances that there is no record of attendance on any date during the appeal and given that they were not invited to give out the opinion, I fail to understand how the said assessors and their opinion found their way in the judgment. I find support in this view from the decision of the Court of Appeal in **Dora Twisa Mwakikosa vs Anamary Twisa Mwakikosa** (Civil Appeal No.129 of 2019) [2020] TZCA 1874; (25 November 2020 TANZLII) where the Court of Appeal, (**Mwarija, J.A.**) stated:

*"In the case at hand, as shown above, the record does not reflect that the assessors were required to give their opinion in the presence of the parties after the closure of defence case. The written opinions of the assessors did, however, find their way into the record in an unexplained way. Nevertheless, in his judgment, the Chairman stated that he considered those opinions. In our considered view, since the parties were not aware of existence of the assessors' opinions, we agree with the counsel for the parties that in essence, the provisions of Regulation 19 (2) of the Regulations were flouted.*

*The failure by the Chairman to require the assessors to state the contents of their written opinions in the presence of the parties rendered the proceedings a nullity because it was tantamount to hearing the application without the aid of assessors. We are supported in that view by our previous decision in the case of **Tubone Mwambeta***

*(supra) cited by the appellant's counsel. When confronted with a similar situation as in this case, we held as follows:*

*"We are increasingly of the considered view that, 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 supplied]"*

In view of the provisions of section 23 (1) read together with section 34 (1) of Cap. 216, the DLHT was not properly constituted sufficient to determine the appeal. It was therefore wrong to proceed with the determination of the appeal without first being properly constituted; and thereafter ensuring that assessors are fully involved in the hearing and eventual determination of the appeal by inviting them to provide their opinion in the presence of parties.

I am aware that, the records at the DLHT contain the opinion of the two assessors. Nonetheless, given that the names of the two assessors do not feature in the coram of the DLHT; and in the circumstances that the assessors were not invited to read the said opinion in front of the parties, it is clear that proceedings before the DLHT were marred with some serious irregularity that affected the


entire case. The irregularity is so serious since it touched on the jurisdiction of the DLHT and has the effect of vitiating the proceedings.

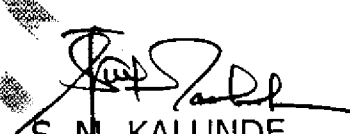
Consequently, I invoke the revisional power conferred to me section 43 of Cap. 216 and quash the entire proceedings; and set aside the judgment and decree of the DLHT in Application No. 75 of 2017. I remit the file to the DLHT to conduct an expedited rehearing of the appeal. further to that, I order that, the rehearing be conducted before another Chairperson and new set of assessors.

Having raised the issue *suo moto*, I make no order as to costs.

**It is so ordered.**

**DATED at DAR ES SALAAM this 16<sup>th</sup> day of APRIL, 2021.**



  
S. M. KALUNDE  
**JUDGE**