

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

**LAND APPEAL NO. 89 OF 2021**

*(From the Decision of the District Land and Housing Tribunal of Ilala District at  
Mwalimu House in Land Application No.436 of 2016)*

**BREAK POINT OUTDOOR CATERERS LIMITED.....APPELLANT**

**VERSUS**

**DAR ES SALAAM CITY COUNCIL.....1<sup>ST</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 28. 08.2022*

*Date of Judgment: 30.08.2022*

**T. N. MWENEGOHA, J.**

The following grounds of appeal are in need of determination as follows;-

- 1. That, the trial Tribunal erred both in law and facts for not according the Appellant a right to be heard.**
- 2. That, the trial tribunal erred both in law and facts in reaching its judgment based on non-founded evidence from the respondent.**
- 3. That, the trial Tribunal erred both in law and facts for admitting and based its judgment by using an exhibit, Exhibit P1 (the Lease Agreement) without being dully paid up with stamp duty.**
- 4. That, the trial Tribunal erred both in law and in reaching its judgment without proper opinions of assessors.**

**5. That, the trial Tribunal grossly erred both in law and facts for ordered the appellant to pay the respondent decretal sum while in law and facts the appellant owes the respondent considerable amount of money for set off in regard of catering services.**

The appeal was disposed by written submissions, Advocate Mafuru Mafuru appeared for the appellant, while the respondent was represented by Judith T. Nasos, learned Solicitor. The appellant abandoned the 2<sup>nd</sup> ground of appeal, hence remained with four grounds only.

In his submissions, Mr. Mafuru started with the 4<sup>th</sup> ground of appeal and insisted that, the records are clear that, during hearing and delivering of judgment by the trial tribunal, no assessors was involved. Although the trial chairperson made a reference as to their opinion, but the records are silence as to when the same was delivered to the parties as required by Section 23(1) of the Land Disputes Courts Act, Cap 216 R. E. 2019. Read together with Regulation 19(2) of the Land Disputes Regulations of 2002 as well as the case of **Tubone Mwambeta versus Mbeya City Council, Civil Appeal No. 287 of 2017, Court of Appeal of Tanzania at Mbeya**, quoting the case of **Edna Adam Kibona vs. Absalom Swebe(sheli), Court of Appeal of Tanzania, Civil Appeal No. 286 of 2017(unreported)**.

In reply, the learned solicitor for the respondent maintained that, the trial Chairperson complied with the provisions of **Section 23(1) of the Land Disputes Courts Act, Cap 216 R. E. 2019**. Also, he took on board the opinion of assessors though was not bound with them and has given his

reasons for dissenting with his assessors. As required under **Section 24 of the Land Disputes Courts Act, Cap 216 R. E. 2019.**

Let me start by reproducing the provisions of **Regulation 19(2) of the District Land and Housing tribunal Regulations GN No. 174/2002**, as follows;-

*"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".*

I went through the case file of the trial tribunal to find if the assessors gave their opinion as required in the above quoted provision. The records show that, the judgment in question was delivered on the 13<sup>th</sup> of February 2020. The said records however do not show if the assessors were present on that material date and further, if they were given the chance to read their opinions in the presence of the parties before the judgment was delivered. Either, upon further perusal of the said file, I came across two separate documents. Both titled **"MAONI"**. One document written by one Mwakalasa, bearing no date as to when exactly it was prepared. The second document dated 06<sup>th</sup> January 2020, more than a month before the impugned decision was delivered. The same document is written by one Jokhe Lemli. It also contains the opinion

Furthermore, the records show that, on the 7<sup>th</sup> of January 2020, the case was called for judgment, the same was not ready and the case was adjourned to another date. It is evident that these opinions, as shown herein above, in particular the one dated the 6<sup>th</sup> of January were not read to the parties as the records are silent on that.

These facts are conclusive evidence, in my settled opinion, to prove the allegations by the appellant that the decision was delivered in absence of the assessors, or the same was delivered without the opinion of assessors being read to the parties. This is contrary to the provisions of Regulation 19 (2) (supra). It has already been settled by the Court of Appeal of Tanzania in the case of **Edna Adam Kibona (supra)**, that,...

*"Assessors 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 regulations required 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 has been considered by the chairman in the final verdict".*

It went further to observe in the same case that;-

*"For 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 them in his judgment. However, in view of the fact that he records do not show that the assessors were required to give them, we fail to understand how and 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".*

For the foregoing reasons, I find the 4<sup>th</sup> ground of appeal to have merit and allow it accordingly.

Owing to the fatal nature of the irregularity so pointed out in the 4<sup>th</sup> ground of appeal, I further find the whole judgment and orders of the trial tribunal null and void. And for the purpose of serving time and energy I see no need to discuss the remaining grounds of appeal (1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> grounds). It is because my findings on the 4<sup>th</sup> ground of appeal are capable of determine the entire appeal to its end.

For the reasons I have given here in above, under Section 43 (1) (b) and 45 of the Land Disputes Courts Act, Cap 216 R. E. 2016, I nullify the proceedings and judgment of the District Land and Housing Tribunal of Kinondoni and hereby order a trial denovo before another Chairman and a new set of assessors be commenced. Each party to bear his or her own costs.

Eventually, the appeal is allowed.

Costs to follow the event.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**30/08/2022**