

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

LAND APPEAL NO. 223 OF 2021

*(Arising from Land Application No. 101 of 2016 District Land and Housing Tribunal of
Kibaha at Kibaha.)*

BETWEEN

1. JUMA RHOBI
2. YAHAYA ASAKWE
3. RAMADHANI PANGA
4. PAUL DANIEL
5. JACKOBO JOACKIMU
6. PETER KAPENJA
7. DOTTO MUSANGA
8. JUMA HUSSENI
9. JORAMU KAMBONA
10. WOMBOZIPASHUA
11. JOHN AKARO
12. JOICE ERNESTI
13. CHED TUNGWANA
14. SITIVINI MWAKATOBE
15. HUSSENI KAMBONA
16. HAMZA KIPETITE
17. JOSEPH MURULE
18. HAMADI MOHAMED
19. JUMA NYAUBA
20. SONI YOSAMU
21. BAKARI MANGI
22. CHALE NYISONGA
23. MIRAJI ATHUMANI
24. MAHEMBA CHACHA
25. BESTI ERITONI
26. JAMES MARO
27. JAMES MVIRE
28. SELEMANI SAID
29. FAIZA KITONKA
30. MWANAHAMISI SHABANI
31. NEEMA MSUNGI
32. HEPPY MWAKAROBO
33. MZEE MORWA

..... APPELLANTS

Acle

34. BUMI BUSESE

VERSUS

CLEMENT PHILIP BOMANI RESPONDENT

JUDGMENT

08/09/2022 & 27/09/2022

A. MSAFIRI, J.

The appellants having been dissatisfied with the decision of the District Land and Housing Tribunal of Kibaha at Kibaha (the trial Tribunal) which decided in the favour of the respondent, they have lodged this Appeal and filed the memorandum of appeal with eight grounds of appeal which I need not reproduce them herein as I will recite them in my determination of this appeal.

The appeal was heard orally, and the appellants were represented by Mr. Samwel Shadrack, learned counsel while the respondent was represented by Mr. S.K. Madulu and Mr. Yusuf Mathias, learned counsels.

Mr. Shadrack argued each ground of appeal separately. The first ground is that the trial Chairperson erred in law and fact for delivering judgment before the assessors have delivered their opinion in public before the parties. *Alls*

Arguing on this ground, Mr. Shadrack submitted that, section 23(2) of the Land Disputes Courts Act, Cap. 216 (the Act) shows how the Tribunals are to deliver their judgments. That, the trial Chairperson failed to comply with the provisions of section 23 of the Act, as the assessors' opinion were not read in public before the delivery of judgment.

To buttress his point, he referred this Court to the case of **Tubone Mwambeta vs. Mbeya City Council**, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported).

He prayed for this ground of appeal to be upheld.

Replying to this ground, Mr. Mathias submitted that, the Tribunals have their own mode of composition of judgment as per the Land Disputes Regulations. Hence, the impugned judgment has satisfied all components which features on how the assessors were involved, and this is particularly at page 13 of the impugned judgment. He added that, beside that, the appellants' rights were not prejudiced as per the provisions of section 45 of the Act. He contended that the assessors' opinion were considered in the impugned judgment.

In rejoinder, Mr. Shadrack, argued that there was failure of justice as per section 45 of the Act after failure to read the opinion of assessors in public. *Alls*

Having heard the submissions from both parties, the issue is whether this ground of appeal has merit.

Section 23(2) of the Act provides as follows;

*"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 added).

To determine the first ground, I had to go through the record of the proceedings of the trial. It shows that on 30/7/2019, the trial commenced. The two assessors were present namely Happiness Kihampa and Mary Kalandamya although their names don't appear in the Coram. The said assessors were present throughout the trial and this is proved by the questions they asked to the witnesses. The records shows that their opinions were written on 20/9/2021 and 21/9/2021 respectively. The judgment was delivered on 01/10/2021. However the records are not clear on when the assessors' opinion were read out to the parties before the judgment.

The records shows that on 06/5/2021, the defence prayed to close the case, the prayer was granted and the Tribunal proceeded to pronounce the date of judgment. It is stated that; *Adls.*

"Kama ambavyo Wakili wa mdaiwa ameomba kufunga kesi, sasa Baraza hili linafunga kesi ya mdaiwa na sasa napanga tarehe ya hukumu. Mawakili wanaamuriwa kuleta mawasilisho."

The trial Chairperson then went to set a date of judgment to be 02/7/2021. As clearly seen, the assessors opinion were not read over to the parties before judgment although the written opinion are on record.

In the case of **Tubone Mwambeta vs. Mbeya City Council**, (supra) which was referred to this Court by the counsel for the appellants, the Court of Appeal while dealing with similar situation had this to say;

*"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 added).*

The Court of Appeal in the case of **Edina Adam Kibona vs. Absolom Sebe (Sheli)**, Civil Appeal No. 286 of 2017, CAT, Mbeya Registry *Alls.*

(Unreported), it held that the assessors opinion must be given in the presence of parties. It was observed thus;

"We are aware that the original record has the opinion of assessors in writing However, the record does not show how the opinion found its way in the Court record."

The Court then concluded that;

*"... the Chairman must require every assessor present to give his opinion. It may be in Kiswahili. **That opinion must be in record and must be read to the parties before judgment is composed.**"(emphasis supplied).*

In the present matter, as observed earlier, this mandatory procedure was not observed by the trial Chairperson.

In their submissions, counsels for the respondent argued that the procedures for composition of judgment were observed and added that, as per section 45 of the Land disputes Courts Act, there was no failure of justice.

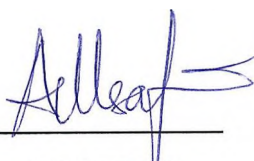
However, this being a mandatory requirement of law it was imperative that it should be complied and failure to that goes to the root of the matter as there was not fair trial. It should be observed that the mandatory requirement was placed to ensure openness and fairness. In the *Atle*

circumstances, I have no option but to find that the omission vitiated the proceedings and the result judgment.

Consequently, I hereby quash and set aside the judgment and decree of the District Land and Housing Tribunal of Kibaha at Kibaha. The proceedings remains intact. The case file is remitted to the trial Tribunal for the trial Chairperson to comply with the requirement of the law and compose a fresh judgment within three months (3) from the date of this decision. The priority be given to the case since it is a long time case. Since the first ground of appeal suffices to dispose of the appeal, I need not determine the other grounds of appeal.

Appeal allowed to that extent. Right of further appeal explained.

Each party to bear their own costs.



A. MSAFIRI
JUDGE
27/9/2022

