

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**MISC. LAND APPEAL NO. 81 OF 2022**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 74 of 2021 and original Land Case No. 25 of 2021 from Karabagaine Ward Tribunal)*

**ADVENTINA NESTORY ..... APPELLANT**

**VERSUS**

**EVODIUS GABRIEL ..... RESPONDENT**

**JUDGMENT**

*Date of Judgment: 08.02.2023  
A.Y. Mwendu J,*

The appellant Ms. Adventina Nestory, being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 74 of 2021, preferred this appeal with three (3) grounds.

During the hearing of this appeal the appellant appeared in person without legal representation while the respondent enjoyed the legal service from Mr. Pereus Mutasingwa.

Before the hearing of this appeal commenced this court discovered an anomaly with the proceedings of the District Land and Housing Tribunal. The said anomaly is lack of assessors' opinion. As such during the hearing, the court directed the parties to only submit in that regard.

When invited to submit in that regard Ms. Adventina, the appellant submitted that she has nothing to add and left it to the court to decide in respect of the raised anomaly.

On his part, Mr. Pereus Mutasingwa, the learned counsel for the respondent, submitted that it is legal requirement under section 23 and 24 of the Land Dispute Court Act [CAP 216 R.E 2019] and regulation 19(2) of the Land Dispute Court (The District Land and Housing Tribunal) Regulation G.N No. 174 of 2003 that assessor's opinion shall be recorded and be read to the parties before the judgment is delivered. He submitted that in the present matter before the District Land and Housing Tribunal, the Assessors' opinion is not reflected in the proceedings and it is not known if the said opinion was ever read to the parties. He concluded by submitting that this anomaly vitiates proceedings. He then prayed the present appeal to be allowed by nullifying the proceedings of the lower tribunal.

I have revisited the records and as it was rightly submitted by the learned counsel, the trial Tribunal's proceeding is tainted with illegality. At page 8 of the tribunal's proceedings the Hon. Chairman recorded as follows and I quote;

*"Baraza: Maoni yamesomwa kwa wajumbe.*

*Amri: Hukumu 30/05/2022."*

However, the said records is silent as to whether the said opinion was read before the parties. Section 23 (2) of the Land Dispute Court's Act provide in a

mandatory term, the importance of observing the composition of the tribunal and the participation of assessors. This section states as follows;

*"Section 23 (2) The District Land and Housing Tribunal shall be duly constituted when held by a chairman and two assessors who shall be require to give out their opinion before the Chairman reaches the judgment." [Emphasis supplied]*

Regarding the above position, the Court of Appeal in the case of SIKUZANI SAID MAGAMBO & ANOTHER VS MOHAMED ROBLE CIVIL APPEAL NO. 197 OF 2018 (unreported) having reproduced section 23(1) and (2) of the Land Dispute Courts Act added that and I quote;

*"In addition, Regulation 19 (1) and (2) of the Regulations impose a duty on a chairperson to require every assessor present at the conclusion of the trial of the suit to give his or her opinion in writing before making his final judgment on the matter".*

Regarding consequences for failure to comply with the above provisions the Court in the case of "SIKUZANI MAGAMBA" (supra) while citing AMEIR MBARAKA AND AZANIA BANK CORP. LTD VS EDGAR KAHWILI CIVIL APPEAL NO. 154 OF 2015 held that;

***"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessor which is not on the records 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." [Emphasis added]***

In the present appeal therefore since the Hon Chairman did not record the opinion of assessors it is therefore considered that no opinion of assessors was availed and read in the presence of the parties before the judgment was composed.

From the foregoing observations, this appeal succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal in Land Appeal No. 74 of 2022 and also any other order emanating therefrom is set aside. Any party interested to pursue his/her rights may do so before a competent tribunal. Each party shall bear its own costs.

It is so ordered.



  
A.Y. Mwenda  
**Judge**  
08.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Ms. Adventina Nestory the Appellant and in the presence of the respondent and his learned counsel Mr. Pereus Mutasingwa



  
A.Y. Mwenda

**Judge**

08.02.2023