

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND APPEAL NO. 73 OF 2022

(Arising from Land Application No. 194 of 2015 District Land and Housing Tribunal for Bukoba)

HAMISI MADOGO (Administrator of the Estate of the late

Mwajuma Athuman)..... 1st APPELLANT

SALUM AMRI..... 2nd APPELLANT

VERSUS

GRATION STEVEN..... RESPONDENT

JUDGMENT

4th and 12th May, 2023

BANZI, J.:

The Appellants lost the case at the District Land and Housing Tribunal for Bukoba (the trial tribunal) where they were sued by the Respondent who claimed to buy part of the house owned by the 2nd Appellant and his sister one Mwajuma Amri Salimu who inherited it from their late grandmother, Mwajuma Athumani for consideration of Tshs.15,000,000/=. The Respondent claimed that, after selling the same, the 2nd Appellant refused to vacate and hand over the portion of the house in dispute. The 2nd Appellant denied the claim alleging that, the transaction in question was not concluded on a reason that, his co-owner was not involved. After receiving the evidence of both sides, the trial tribunal decided in favour of the

Respondent that, he lawfully bought part the house owned by the 2nd Appellant. It further ordered the 2nd Appellant to vacate the suit premises. Aggrieved with the decision of the trial tribunal, the Appellants appealed to this court with four grounds as hereunder;

- 1. That, the District Land and Housing chairman erred in law and fact to determine the matter without considering the mandatory provisions of section 23 (1) and (2) of the Courts (Land Dispute Settlement) (sic) Act [Cap. 216 R.E. 2019] by reaching the decision without the opinion of assessors.*
- 2. That, the District Land and Housing Tribunal chairman erred in both fact and law by failure to evaluate the evidence adduced by the 2nd Appellant that he is the legal owners of the disputed plot together with his sister, from inheritance of their late grandmother one Mwajuma Athumani.*
- 3. That, the District Land and Housing Tribunal chairman grossly erred in both facts and law for failure to consider that there was an illegal sale agreement between the Appellant and the Respondent concerning a plot of inheritance, making the whole transaction null and void in law.*
- 4. That, the District Land and Housing Tribunal chairman erred in facts and law for failure to take into account the fact that the disputed plot was owned jointly, so any action of disposition among the owners required the consent from the other owners.*

At the hearing of the appeal, the Appellants appeared in person, unrepresented whereas, the Respondent enjoyed legal services of Mr. Scarius Bukagile and Ms. Mastula Ahmed, learned advocates. In their submissions, the Appellants did not traverse all grounds of appeal as were raised, instead they on submitted what was in their knowledge. It was their submission that, the decision of the trial tribunal was reached contrary to the law because the assessors did not give their opinions before judgment could be delivered. Also, they faulted the sale transaction claiming that, the same did not take place. It was also their contention that, the chairman did not consider their evidence and the exhibits they tendered which were approved by the Street and Ward authorities. Furthermore, they challenged the procedure used to recall the Respondent (AW1) claiming to be flawed as he was recalled after closure of case for both parties. Therefore, they prayed for this court to quash the decision of the trial tribunal and the appeal be allowed with costs.

In their reply, Mr. Bukagile submitted that, the chairman did not involve the assessors because their tenure expired before conclusion of the matter, that is in October, 2018 as appeared at page 60 of the typed proceedings. For that matter, the chairman was justified to proceed without assessors. He further responded that, the evidence was properly evaluated

and the sale agreement was not illegal because the parties were competent and there was consideration which was furnished and witnessed by street authority and clan members. He concluded his submission by insisting that, the disputed house was not co-owned because there was no evidence that was produced to that effect. He finally prayed for the appeal to be dismissed for want of merit.

In rejoinder, the Appellants were persistent that, since the house is jointly owned, it could not be sold partly that is why they disputed the alleged sale. They went further stating that, the sale transaction was not concluded and the Respondent left with his money. They reiterated their chief submission and urged this court to consider their evidence and the exhibit showing that, the sale transaction was not concluded after arrival of the 1st Appellant who blocked the deal.

Having carefully perused the record of the trial tribunal, grounds of appeal and submissions of both sides, I find it prudent to start with the first ground which in the considered view of this court, it suffices to dispose of the appeal.

Section 23 (1) (2) of the Land Disputes Courts Act provides that;

*"(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.*

(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence."(Emphasis added).

What I gather from the provisions of the law cited above is that, for the District Land and Housing Tribunal to be properly constituted, it requires the chairman to sit with at least two assessors. That is to say, the District Land and Housing Tribunal is vested with jurisdiction to adjudicate land matters when the chairman sits with two assessors who at the end of trial are mandated to give their opinion following their involvement. Nonetheless, the chairman has option to invoke the provisions of subsection (3) above and proceed without assessors if in the course of proceedings one or both assessors are absent. But according to the case of **Cleoplace Kaiza v.**

Potence Mugumila [2022] TZCA 760 Tanzlii, such option can be rarely applied to avoid occasioning injustice and unfair hearing.

In the matter at hand, the record reveals that, when the trial commenced on 9th February, 2017, the coram shows as hereunder;

<i>"Date:</i>	<i>09.02.2017</i>
<i>Coram:</i>	<i>R.E. Assey – Chairman</i>
<i>Applicant:</i>	<i>Present</i>
<i>Respondents:</i>	<i>1st present, 2nd present</i>
<i>T/C</i>	<i>Evelyn"</i>

It is obvious from the extract above that, when the trial commenced, the chairman proceeded to take the evidence of the Respondent who was the Applicant (AW1) by then in the absence of assessors. After AW1 was cross-examined by the Appellants/Respondents, the chairman adjourned the case until 16th May, 2017. Although on 16th May, 2017, the hearing did not take place, but Annamary and Bwahama emerged and sat in as assessors while the proceedings were already flawed. On 17th May, 2017 unlike typed proceedings which indicate Annamary and Bwahama to sit in as assessors, the original record reveals the name of Annamary alone. On that day, the trial proceeded by receiving testimony of AW2 and AW3. However, both typed and original records reveal that, it was Annamary alone who was involved in questing the witnesses. There is no indication of involvement of

the second assessor and one may wonder how the name of Bwahama ended up in the coram of typed proceedings while he was not present in original record. This is a clear proof that, on that date, the chairman sat with one assessor which is against the dictates of the law. On 2nd July, 2018, Annamary and Bwahama sat in as assessors when the 1st and 2nd Appellants gave their testimony. From 2nd July, 2018 hearing did not take place until 26th September, 2018, when the case was dismissed for non-appearance of the Applicant which is also another irregularity because the Applicant had already closed his case. After the case was restored, on 21st November, 2019, the chairman invoked the provisions of section 23 (3) of the Land Disputes Courts Act and proceeded in the absence of assessors on the reason that, their tenure had expired since October, 2018.

Basing on what had transpired before the trial tribunal, it cannot be said that, the assessors were involved in the hearing as envisaged by the law. This is due to the fact that, on the first day of hearing, the chairman sat and proceeded to receive the testimony of AW1 in the absence of assessors. Having noted that, none of the assessors is present, the chairman could have adjourned the matter to another date but surprisingly, he proceeded alone in total disregard of section 23 (1) (2) of the Land Disputes Act. That is to say, the trial tribunal lacked jurisdiction because it was not duly constituted.

Apart from that, when the two assessors emerged, he proceeded with one assessor without invoking the provisions of section 23 (3) of the Land Disputes Courts Act. This is a fatal irregularity which in itself suffices to vitiate the entire proceedings. Thus, with due respect, the argument by Mr. Bukagile that, the chairman did not involve the assessors because their tenure expired before conclusion of the matter, is unfounded because their involvement prior to the expiration of their tenure flawed the law. In the case of **Cleophace Kaiza v. Potence Mugumila** (*supra*), a similar situation occurred where there was no assessors' opinion as their tenure had expired before composition of judgment. Despite their tenure being expired, the Court of Appeal nullified the entire proceedings due to irregular involvement of assessors which transpired before expiration of their tenure. The same applies to our matter at hand, where there is irregularity concerning composition of the trial tribunal and involvement of the assessors before expiration of their tenure which vitiates the entire proceedings.

Having said so, I find the first ground with merit and this in itself, it suffices to dispose of the appeal. Thus, I allow the appeal by invoking revisional jurisdiction under section 43 (1) (b) of the Land Disputes Courts Act and nullify the entire proceedings of the trial tribunal, quash the judgment and set aside the decree. With the amendment of section 13 of

the Land Disputes Courts Act which requires each case to be passed before ward tribunal for amicable settlement before being instituted at the District Land and Housing Tribunal, I am refrained to order a re-trial. However, if the Respondent is still interested to pursue this matter, he may file the fresh suit according to the law. Since either party is to blame for the irregularity, I make no orders as to costs.



I. K. BANZI
JUDGE
12/05/2023

Delivered this 12th day of May, 2023 in the presence of the Appellants and the Respondent both in person. Right of appeal explained.



I. K. BANZI
JUDGE
12/05/2023