

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

LAND APPEAL NO. 115 OF 2020

(Arising from Land Application No. 7 of 2016 of the DLHT of Muleba at Muleba)

HILARY HENERICO KABUHAYA1ST APPELLANT

ARCHARD JOVIN KABUHAYA.....2ND APPELLANT

Versus

ADERINA DONATUS LUGONZA.....RESPONDENT

RULING

22/09/2021 & 18/10/2021

NGIGWANA, J.

Being disheartened with the decision of the DLHT for Muleba at Muleba in Application No.7/2016 delivered on 23/02/2018, the first and second appellants through the service of Dustan Mutagahywa, Advocate preferred this appeal on the following grounds.

- 1. That the trial tribunal erred in fact and in law for entertaining the suit which was time barred.*
- 2. That the tribunal erred in fact and law for entertaining the suit which was brought against the wrong parties.*
- 3. That the trial tribunal erred in law and fact for having decided the suit and reached at the judgment which was against the weight of evidence adduced.*
- 4. That there was procedural irregularity in the sitting of the tribunal assessors involved in the hearing of the suit such that the involvement of assessors in the hearing affected the chairperson decision.*

5. *That the trial tribunal failed to analyse the evidence adduced before it, such that it arrived at wrong judgment.*

At the hearing of this appeal, the appellants' counsel Dustan, Advocate, addressed and argued only issues which touch point of law which were also observed by this court. These were the involvement of the assessors and procedure compliance in visiting the locus inquo as required by law.

Mr. Dustan told the court that the proceedings at the trial shows that the assessors who were present for respondent's side (Applicant at the trial) were **J. Mutalemwa** and **P. Marijani** that is on 25/11/2016 until 25/11/2016 when the case was marked closed. Whereas on 13/01/2017 there was new set of assessors **P. Juvenal** and **B. Mugishagwe** on defence case who also heard the case to the end.

According to Mr. Dustan, change of assessors in the same trial is fatal and vitiates the proceedings and contrary to section 23(3) of the Land Disputes Courts Act, Cap 216 (R. E 2019) He cited the case of **Y. S. Chawala & CO. LTD vs Dr. Abbas Teherali**, Civil Appeal No.70 of 2017, CAT at Tanga (Unreported). That assessors who have not participated in the full trial cannot give opinion.

He also submitted on the issue of visting locus inquo that the procedure was not followed which also vitiates the proceedings.

Mr. Matete, the learned counsel who represented the respondent conceded on the two submitted irregularities that there was change of assessors and non-compliance to visting *locus inquo* which all vitiates the proceedings. On the issue of non-compliance in visting a *locus inquo*, Mr Matete stressed more by referring on the case of **Sikuzani**

Said Magambo and Another vs Mohamed Roble, Civil Appeal No.197 of 2018, CAT at Dodoma (Unreported) which guided the procedure on what to do before and after visiting the *locus inquo*.

The two advocates were at one on the apparent irregularities that they vitiate the entire proceedings but differed on the way forward. While advocate Matete prayed for trial *de novo*, Advocate Dustun Mtagahiwa prayed for the remedy of a party who will still be interested to institute a fresh case subject of law of limitation.

This court is now duty bound to determine whether the revealed irregularities vitiates the trial proceedings and if yes what should be a proper remedy to order.

As I said, parties are at one that the irregularities on change of assessors and non-compliance to the procedure of visiting the *locus inquo* vitiates the proceedings. Both counsel have taken such a stand basing on the requirement of law under section 23(3) of the Land Disputes Courts Act, Cap 216 (R.E 2002) which prohibits change of assessors during trial and similarly case law dictates on that as referred by the appellants' counsel and as well conceded by the respondent's counsel. This court as well is in agreement with the learned counsels that the revealed irregularities vitiate the proceedings.

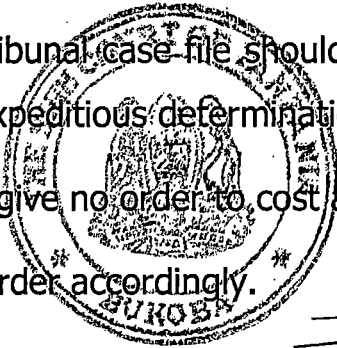
Coming on what remedy should be ordered by this court. Advocate Dustan propose that the proper remedy is to order the party who will be interested to file a fresh matter subject to law of limitation while advocate matete opposed that move and prayed this court to order for trial *de novo/a re trial*. Trial *de novo* implies that there is a competent case filed before the court, what therefore is required is a re-trial before another competent chairman and therefore the case number will be the

same and pleadings before trial will remain intact. In my view this kind of order is proper in this circumstance where the flaw was not caused by parties as it will not punish the party who had previously initiated the matter in time before the trial tribunal unlike ordering as suggested by Mr. Dustan that any party who is still interested in a matter to file a fresh suit subject of law limitation which will expose parties to multiplicity of suits which attracts time and costs.

In the upshot, I hereby quash the proceedings of the trial tribunal and the resultant judgment and decree therein and order the expeditious re-trial before another chairman with the new set of assessors. The trial tribunal case file should immediately be reverted to the trial tribunal for expeditious determination.

I give no order to cost as to costs.

Order accordingly.



E. L. NGIGWANA

JUDGE

18/10/2021

Ruling delivered this 18th day of October, 2021 in the presence of the 1st appellant in person, Mr. E. M. Kamaleki, Judges' Law Assistant, G. Rugaika, B/C but in the absence of the 2nd appellant and the respondent.



E. L. NGIGWANA

JUDGE

18/10/2021