

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA.

LAND CASE APPEAL NO. 12 OF 2020

(Arising from Land Case No. 17 of 2017 of the District Land and Housing Tribunal at Bukoba)

ADOLPH MUTABUZI.....APPELLANT

VERSUS

PHILBERT ROBERT.....RESPONDENT

JUDGMENT

20th September, 2022 & 22nd September, 2022

Isaya, J.

The Respondent, as the administrator of estate of the late Edmund Robert (the deceased) who died in 2003, sued the appellant at Bukoba District Land and Housing Tribunal (DLHT) vide Application No. 17 of 2017, contending that the appellant encroached the Suitland that belonged to the deceased which is part of the estates subject for distribution to the rightful heirs. He sought the trial tribunal to order vacant possession of the suit property. The tribunal entered judgment in favour of the Respondent and granted him all reliefs sought.

The appellant having been aggrieved with the judgment and decree of the District and Land Tribunal, filed this appeal challenging the judgment and decree on the following grounds: -

- 1. That the trial learned Chairman grossly erred in law and facts for failure to rule out that the Application filed by the Respondent before the District*



Land and Housing Tribunal was incurably defective, unmaintainable and bad in law;

- 2. That the trial District Land and Housing Tribunal erred in law and facts by deciding the case in favour of the Respondent while the matter was not proved on balance of probabilities;*
- 3. That the trial Chairman greatly erred in law and in facts by not considering the evidence adduced by neighbours during visiting the locus in quo;*
- 4. That the trial Tribunal erred in law and in fact for basing its finding on the contradictory evidence of the Respondent and thereby pronouncing contradicting judgment against the weight of evidence;*
- 5. That the trial Chairman grossly erred in law and facts to shift the burden of proof from the Respondent to the Appellant;*
- 6. That the trial Chairman erred in law and facts for failure to hold in favour of the Appellant and dismiss the application;*
- 7. That the trial learned Chairman greatly erred in law and facts by failure to decided (sic) on each issue and give reason of on the same;*
- 8. That in totality the proceedings of the District Land and Housing Tribunal are nullity and tainted with illegalities.*

When the appeal was called on for hearing, the Appellant was represented by Pilly Hussein, learned advocate, whereas the Respondent, was represented by Mr. Lameck John Erasto, learned advocate.

After a brief dialogue with the court on the illegalities contended by Ms. Pilly in the grounds of appeal, both parties agreed that there was irregularity committed by the Tribunal before it delivered its judgment. They agreed to argue only on ground number 8 which, according to them, suffices to dispose of the matter.



Ms. Pilly started her submission by referring the court at page 76 of the typed proceedings. She submitted that they visited the locus in quo on 26/11/2020 as ordered by the Tribunal, but nothing was recorded as to what transpired there. She argued that failure to record what transpired after visiting the locus in quo has the effect to make the proceedings, judgment and subsequent order a nullity. She therefore asked this court to quash the proceedings and set aside the decision reached thereafter.

In reply, Mr. Lameck conceded to the submissions made by Ms. Pilly Hussein that there were glaring defects that occasioned on the visiting of locus in quo. He added that though visiting the locus in quo is not a must but when the tribunal decides to make a visit, the procedures must be followed. He supported his submission with cases of **Richard Ernest Kazaula vs Buhembe Primary Cooperative Society**, Land Appeal No. 20 of 2022, HC at Bukoba; **Sikuzani Said Magambo and Another vs Mohamed Roble**, Civil Appeal No. 197 of 218. Therefore, he prayed the proceedings to be declared a nullity. That proceedings should be quashed and the decision thereof be set aside and the matter start de novo to any interested party

I have carefully and dutifully considered the submissions made by the counsel for both parties. Sincerely, I agree with them that the records are silent on what transpired on the locus in quo. From the records, it is clear that the Tribunal ordered the visit to be made on 26/11/2020. The next date the matter to come again before the Tribunal was on 15/12/2020 where the tribunal ordered the



judgment to be delivered on 22/12/2020. It is unfortunate that in between those dates, nothing is said or recorded on the legally crucial part of visiting at the locus in quo.

The chairman ought to record what transpired after visiting the locus in quo. After visiting the locus in quo, the tribunal was to re-assemble and what was gathered at the locus in quo be read in the presence of all parties who made the visit and if there would be any additions, corrections, clarifications could be given before the judgment is delivered. There is plethora of authorities which insist that the chairman has to record all what has transpired after visiting the locus in quo. In the case of **Prof. T.L Maliyamkono vs Wilhem Sirivester Erio**, Civil Appeal No. 93 of 2021, where the Court of Appeal of Tanzania had this to say;

"Notice should be taken during the visit and then all those in attendance should re-assemble in court and the notes be read out to the parties to ensure its correctness."

The same position was also stated in the case of **Sikuzani Saidi Magambo and Another v. Mohamed Roble**, Civil Appeal 197 of 2018 the Court of Appeal of Tanzania citing the case of **Nizar M.H. v. Gulamali Fazal Janmohamed** [1980] TLR 29 held that:

"When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, the court should attend with the parties



and their advocate, if any and with much each witness as may have to testify in that particular matter... when the court re-assemble in the court room, all such notes should be read out to the parties and their advocates and comments, amendments, or objections called for and if necessary incorporated. Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand or relate to the evidence in court given by witnesses. We trust that this procedure will be adopted by the courts in future.

Fortunately, this court confronted with the same issue in the **Land Case Appeal No.20 of 2022, between Richard Ernest Kazaula Vs Buhembe Primary Cooperative Society**, had the same view on the issue.

All said, as conceded by both parties nothing has been recorded during the visit of the locus in quo. They did not re-assemble in court too and notice be read out to the parties to ensure its correctness. Under the premise, I invoke the revisional powers of this court under section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 R:E 2019 and nullify the all proceedings, quash and set aside the judgment and decree of the tribunal in Land Application No. 17 of 2017. Any interested party can file the matter afresh before another Chairman sitting with a new set of Assessors. Given the fact that the errors were caused by the tribunal, each party should shoulder the costs of this case. Order accordingly.

Dated at Bukoba this 22nd day of September, 2022.





G. N. Isaya

JUDGE

22/09/2022

Judgment delivered this 22nd day of September, 2022 in the presence of the Appellant, Mr. Adolph Mutabuzi present in person and Miss Erieth Barnabas, learned advocate for the Respondent and the Respondent present in person, Hon. Audax Vedasto, the Judge's Law Assistant and Ms. Grace Mutoka, B/C.



G. N. Isaya

JUDGE

22/09/2022