

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE APPEAL No. 73 OF 2019**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in  
Application No. 204 of 2011)*

**THE REGISTERED TRUSTEES OF THE**

**ANGLICAN CHURCH OF TANZANIA ----- APPELLANT**

**Versus**

**1. PASCHAL KAMUZORA**

**2. BUKOBA MUNICIPAL COUNCIL } ----- RESPONDENTS**

**JUDGMENT**

30.06.2021 & 30.06.2021

**Mtulya, J.:**

On 7<sup>th</sup> September 2011, Mr. Pascal L. Kamuzora (the First Respondent) approached the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) and filed **Application No. 204** praying for an easement between two (2) lands in Plot No. 90, Low Density, Boma Road, Bukoba Municipality in Kagera Region (the Plot) and land premised in plot titled No. 11928 located at Bukoba Township (the Town Land). The two lands are adjacent to each other and according to plots plans registered in exhibit A-1 and D-1 tendered in the Tribunal, there is un-sized no-man's land between the

Plot and Town Land. It is this land which brought the parties to this court.

During the hearing of the Application, the dispute changed its course from determination of the passage in easement to determination of the rightful owner of the Plot hence the issue and determination of the dispute took the course. Finally, the Tribunal declared the Applicant as a rightful owner of the Plot and First Respondent was ordered to remove all materials from the Plot.

However, today afternoon when the appeal was scheduled in Civil Session Cases hearing, this court *suo moto* noted and raised a question of size of the Plot and Town Land described in the two (2) exhibits A-1 and D-1 in search of the size of the passage. The court also noted that the record is silent on whether physical measurements of the lands were conducted or else the Tribunal visited the *locus in quo* to ascertain the extent of intrusion, if any and the allegation of easement.

In order for the parties to exercise their right to be heard as enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George**

**Mwakyoma**, Civil Appeal No. 45 of 2002 and **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44), learned counsels for the parties were invited to assist this court in arriving justice.

It was fortunate that all the contesting parties had enjoyed legal representation. The Appellant invited Mr. Josephat S. Rweyemamu to argue the appeal whereas the First Respondent hired the legal services of Mr. Zeddy Ally, and Second Respondent marshalled his Municipal Solicitor, Mr. Athumani Msosole. The learned minds had discussions and consultations and finally admitted that the prayer entered by Mr. Josephat S. Rweyemamu on 8<sup>th</sup> October 2019 during the proceedings in the Tribunal, as is depicted at page 73 of the proceedings of the Tribunal, was supposed to be granted for sake of certainty of the lands demarcating the Plot and Town Land.

However, the prayer registered by Mr. Rweyemamu was not well received by the Tribunal. In replying the prayer, the learned Chairman of the Tribunal, at page 73 of the proceedings, declined to grant the request and reasoned that: *there is no reason to visit the locus. The land is surveyed and has demarcations.* Nevertheless, the learned chairman was unaware of the real dispute before the Tribunal. The real dispute was on easement in the alleged no-man's land between

the Plot and Town Land which is alleged not to be in any party's mandate from the parties' land titles in exhibit A-1 and D-1.

It is fortunate that the parties prayed this appeal be allowed, but with an order to search for an independent expert on land demarcations matters to resolve the dispute by physical visitation of the scene of the dispute and measuring the areas and their associated demarcations. On my side, I think, both identification of the real dispute and suggestion in resolving the dispute have merit in settling the dispute.

I have therefore formed an opinion to allow the appeal and hereby order invitation of an independent land demarcations expert to measure the Plot and Town Land in search of actual size of the lands possessed by the Appellant and the First Respondent. I further order that the independent expert be employed and paid by all the parties in this dispute and during the process of identification of the demarcations, all parties may be present. The independent expert will work under supervision of the Bukoba Municipal Council as the custodian of the area within the Municipal Council.

Having said so and considering the learned minds acted as officers of the court under section 66 of the **Advocates Act** [Cap. 341

R.E. 2019] and noting the dispute is not yet resolved to the finally, I order no costs in this appeal. Each party shall bear its costs.

It is so ordered.



  
F.H Mtulya

**Judge**

30.06.2021

This judgment was delivered in chambers under the seal of this court in the presence of Mr. Josephat S. Rweyemamu for the First Respondent, Mr. Zeddy Ally for the Appellant and Athumani Msosole for the Bukoba Municipal Council.



  
F.H Mtulya

**Judge**

30.06.2021