IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT BUKOBA
LAND CASE APPEAL NO. 14/2015

(From the Decision of the District Land and Housing Tribunal of Bukoba District at Bukoba in Land Case No. 132 of 2013)

MUSSA KONDO & ANOTHER .....APPELLANT

VERSUS

CRETUS THOMAS KALINDA.....RESPONDENT

EXPARTE JUDGMENT

24/4 & 10/5, 2018

S. M. RUMANYIKA,J

The appeal, and this in fact is its historical background, is against the 17/11/2014 ruling and drawn order. The District Land and Housing Tribuanal Bukoba (the DLHT) having partly overruled and partly sustained a 3 limbed preliminary point of objection (p.o). But "very unusually" in the end, the chair declared Crestus Thomas Kalinda (herein the respondent) lawful owner of the disputed land.

I think it would bring no harm to reproduce the p.o;

1. This honorable tribunal is not clothed with pecuniary jurisdiction to preside over and determine the matter.
2. This suit is un maintainable at law for misjoinder/non-joinder of parties.

3. This suit is incurable irredeemably defective and thus un maintainable at law for having a defective VERIFICATION CLAUSE which contravene the mandatory provision of Order IV RULE 15 (3) OF THE CIVIL PROCEDURE CODE CAP 33. RE. 2002.

In order from the very beginning to appreciate the gist of the appeal, here were the chair's findings and order. I quote him **verbatim**. But in part,

". . . courts in the administration of justice they should not be constrained unduly by technical requirement...

. . . the signing of the plaint is a matter of procedure and does not affect the merit . . . it is obvious that the applicant claim is genuine one yet *the preliminary objection hold water.* Therefore I partly agree with the preliminary objection . . . . **having observed the above position it is established that the suit land is not part of the land subject to the sale agreement as between the 1st and 2nd respondent** . . . . the applicant himself has never sold his land to the 1st respondent which could raise any genuine claim from the 1st respondent . . . .the application is hereby struck out the suit land belong to the applicant . . ."

The above quotation would in other words be summarized that non signing of the verification clause wasn't fatal. Both the applicant's claims and p.o were genuine but partly the p.o was sustained and partly overruled. That the suit land wasn't actually in dispute.

The two grounds of appeal revolve around points; *one;* that having held that the matter was improperly before the tribunal, the trial chair

erred in law and fact not striking out the application. *Two;* that the trial chair grossly erred in law and fact by declaring the respondent the lawful owner of the disputed land before heard the case on merits.

Mr. Aaron Kabunga learned counsel appeared for the appellant. Though by way of publication (the local Mwananchi news paper issue No. 0586-7573 of 07/09/2016) proven duly served, the respondent did not appear. Hence the exparte judgment.

The learned counsel faulted the chair and, in a nutshell submitted that it could be right that the matter was irreparably improperly before the tribunal. But nevertheless very strangely the chair gave stringent orders. Namely a declaration that the applicant was the lawful owner of the disputed land. That not only the trial tribunal had no jurisdiction any longer, but also it was at the time fanctus officio. Leave alone having no evidence and legal basis for the decision/order. We pray that the decision be quashed and the order be set aside. Stressed Mr. Kabunga.

The issue is whether rightly or not rightly once it was declared as having been improperly before the court and liable to be struck out, declaration by the chair of the applicant being the lawful owner of the disputed land was lawful. The answer is No! reasons are 3; *one,* there was before the chair no evidence whatsoever so to order; *two;* the order was premature, improper and unlawful. *Three;* like Mr. Kabunga submitted the appellant was in fact condemned unheard. It was very unfortunate that the chair blew hot and cold at one and the same time. The effects of non observance of principles of natural justice require that even if the chair

would have arrived at the same conclusion had he heard the parties is immaterial.

May I also comment on the other two points ; non signing by plaintiff of the verification clause in the plaint and non joinder/misjoinder of parties. I think with regard to point one, the trial chair could not be more incorrect. Like any other legal facts, claims or allegations, it was through the verification clause where one may get know author/owner of the claims. It follows therefore that a non signed verification clause is as good as a disowned plaint. The omission in my considered opinion goes into roots of the claim. It is more of a mere legal technicality. Sufficed the point to dispose of the matter.

With regard to non joinder or misjoinder of the parties, the general rule required that non of the two defeats cases. However, the rule needs to be used with a high degree of delicacy. As, at times it would tantamount to execution of courts decrees next to impossible. Once that one happened no doubts courts shall be considered as having failed to discharge its constitutional mandate.

With all this said and done, the appeal is hereby allowed. Each party shall bear their costs (given nature of the order appealed against). Decision and orders of the trial tribunal are, for avoidance of doubts quashed and set aside respectively. Now that the case at the tribunal is in fact considered and or now ordered as having been struck out, parties may wish to go back to the trial tribunal and reinstitute the matter according to law.

Right of appeal explained.

S.M. Rumanyika
Judge
27/04/2018

Delivered under my hand and seal of the court in court this 10/05 2018 in the presence of the appellant only.

S.M. Rumanyika
Judge
10/05/2018