

**IN THE HIGH COURT OF TANZANIA AT BUKOBA**

**MISC LAND CASE APPEAL NO 37 OF 2006**

*(From The Decision of the District Land and Housing Tribunal of Bukoba District  
at Bukoba in Land Revision No 17/2003 Arising From Land Case*

*No 45 of 2010 at Isingiro Ward Tribunal)*

**JOHN BILISINGI ..... APPELLANT**

**VERSUS**

**PRINCHIPIUS MSHEMBA ..... RESPONDENT**

**JUDGMENT**

*12/03/2018 & 25/5/2018*

**KAIRO, J**

The appellant John Bilisingi appeals against the decision in Land Revision No. 17/2013 of the District Land and Housing Tribunal at Bukoba, Kagera dated 03/06/2014 in which the DLHT entertained the revision and nullified, quashed and set aside all the proceedings before Isingiro Ward Tribunal in

Land Application No. 45/2010. The respondent Princhipius Mshemba resists to this appeal.

The matter originated from the Ward Tribunal for Isingiro in Land Application No. 45/2010. Before the trial tribunal, the present appellant was sued by one Justinian Elizeus for trespassing into the suit land. The complainant/ applicant in that case, Justinian Elizeus alleged that the appellant had encroached into the clan shamba and damaged the properties by removing the roofs, doors and windows in the house therein. He further alleged that he was given the suit land and the house inclusive by his father Elizeus Anthony and tendered in trial tribunal the letter to that effect. The present appellant on his part, stated that he purchased the suit land together with the house from Elizeus Anthony (who is the father of the applicant; Justinian Elizeus at the purchase price of Tshs 3, 000, 000/= and tendered the sale agreement to that effect. The present respondent testified on the part of Justinian Elizeus while Elizeus Anthony testified on the side of the present appellant. The trial tribunal after hearing the parties and visited the *locus in quo* decided in favor of the present appellant by declaring him the legal owner of the disputed land. Following that decision, the present respondent, although not part of the proceedings, filed a revision before the DLHT on complaints that the suit land was sold without obtaining consent from the clan head. The DLHT quashed the whole proceedings of Isingiro ward tribunal and set aside the orders emanated

there from for non-joinder of the vendor Elizeus Anthony and lack of consent of the clan head.

Aggrieved, the appellant preferred the present appeal on eight (8) grounds. The essence of his appeal can be summarized as follows: **First;** the DLHT erred in law and fact to admit the Land Revision No/17/2013 which was brought by the respondent without having special power of attorney as required by Order III Rule I of Civil Procedure Code [Cap 33 R.E. 2002]. **Second;** the DLHT erred to admit the cooked evidence as the respondent did not tender any document to show that he was appointed by the clan members to be the head of clan. **Third;** the DLHT erred to admit the evidence of the respondent who had no *locus standi* to prove the facts being not a party to the proceedings as he was the 2<sup>nd</sup> witness on the side of the respondent. **Fourth;** the DLHT erred in admitting that the suit land was a clan land that requires consent of the clan head before being sold while the initial owner told the court that he bought the same from Zefulin Kanagwa. **Fifth;** the DLHT erred in law and fact for not considering the decision of trial ward tribunal. **Sixth;** the DLHT erred in law and fact as the respondent had no *locus standi* to institute the revision while as was not part of the proceedings. The decision of trial tribunal was sound and determined the matter conclusively. **Seventh;** the DLHT erred in law and fact for not considering the proceedings of the trial ward tribunal and ordering the appellant to pay compensation of three millions (3,000,000/=) to the Abasita

clan members without considering the four years of an exhausted development that was done over the land by the appellant.

At the hearing of the appeal, the parties appeared in person. In his brief oral submission, the appellant stated that he had nothing to add apart from the contents of the memorandum of appeal. Likewise, the respondent told the court that he had nothing substantial to add to the reply of the grounds of appeal raised by the appellant.

In determining this appeal, the court will address the grounds of appeal in their totality while concentrating on the bases of the findings of the DLHT:

Starting with the non-joinder of the vendor; the question to be addressed is whether it was fatal for the vendor Elizeus Anthony not to be joined as a party to the proceedings of the trial wards tribunal in Land application No. 45/2010.

The DLHT nullified the proceedings of Isingiro ward tribunal on ground that the vendor one Elizeus Anthony was not joined as a party to the proceedings at the trial tribunal. It is the principle of the law that the court cannot adjudicate the matter where the necessary part was not joined to the suit as plaintiff or defendants for the effective enforcement of the adjudicator's award. In the case at hand, the vendor, Elizeus Anthony was initially the legal owner of the suit land. He sold the same to the appellant and reduced the agreement into writings. He is necessary party or proper part in the matter at hand where his absence cannot make the trial tribunal to

determine the matter conclusively. Though, Elizeus Anthony was not made as a part in land application No. 45/2010 but was summoned and testified before the trial tribunal on the side of the appellant. He contended to have sold the suit land to the appellant at the tune of Tshs 3,000,000/=. His presence before the trial tribunal enabled the tribunal to effectually and completely determine the matter and settle all questions involved in the suit. Therefore there was nothing that caused miscarriage of justice on the part of the respondent, since the vendor was present to address all the questions involved in the suit and the matter was finally determined.

Besides the law provides that that a suit is not defeated for the reason of mis-joinder or non-joinder of parties rather the courts is to deal with the matter in controversy so far as with regards to the rights and interest of the parties before it as was observed in the case of **Magdalena Daniel vs Godwin Tabula High Court Land Case Appeal No. 37/2013** (Bukoba unreported)

Under the circumstances, I hold that the DLHT was erred in law and in fact to nullify the record of Isingiro ward tribunal on ground of non-joinder of Elizeus Anthony as he was not a necessary party and his role as a witness was enough enable the court determine the case conclusively.

On the issue of clan land, the question to be addressed by this court is whether the land in dispute was a clan land as argued by the respondent. Going though the evidence on record, it was the evidence of the respondent Princhipius Mushemba that his father one Felician came to Kihanga area,

Kagarwe district in 1979 from Ihangiro and bought a shamba. When he went back to Ihangiro he came with his relative, one Elizeus Anthony and bought two pieces of land. Thereafter, Elizeus sold one shamba without involving the clan members. He then handed over the suit land to Justian Elizeus to take care the shamba. As he lost or misplaced the sales agreement of the suit land, he wrote a letter that he had left the shamba with Justian Elizeus and thus he should not be disturbed by anyone. He left the village and now he is back. From this piece of evidence, it is apparently clear that the vendor Elizeus Anthony purchased the shamba when he came from Ihangiro to Kihanga, Karagwe. He did not inherit from his ancestors as the clan shamba. Elizeus Anthony testified that he don't have any clan members as he is "Mnyaihangiro" and Rwomwadi is "Mziba". He called them to witness the sale transaction as friends and not clan members. He sold his own land and not clan land. This version of evidence put it clear that the suit land was not a clan land to necessitate the clan head either to have signed the sales agreement or to consent on the purchasing of the same being the head of Abasita clan and not Ihangiro clan. Besides the suit land was bought from Zufilin Kanagwa hence not part of clan land. I get fortification on this stance in the case of **Pancras Elias versus Gratian Pancras 1968 HCD No. 411** where Seaton J, held that *the land bought from third party is not part of the clan land therefore there was no right to redeem.*

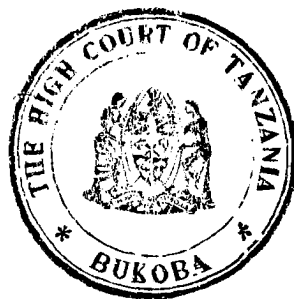
Consequently, it is the finding of this court that the DLHT erred in law and in fact for nullifying the record in Land Application No. 45/2010 on this ground

that the land in dispute was a clan land that required the consent of the clan head. The evidence available in the file negates the said finding by the DLHT rather it suggest that the land in dispute was originally owned by Elizeus Anthony who has bought it from Zufilin Kanagwa, as such the respondent had no right to claim over the land or to redeem the same. In the same vein the Respondent has no *locus standi* to file the revision proceedings as the disputed land wasn't a clan land and thus he doesn't have any interest on it.

All in all I find the appeal with substance. For the foregoing reasons therefore, I allow this appeal. All the proceedings and orders of the DLHT are quashed and set aside. I sustain the proceedings in Land Application No 45/2010 before the Isingiro ward tribunal and orders emanated thereto. Appeal allowed with costs.

It is so ordered.

R/A explained



  
L.G KAIRO

JUDGE

At Bukoba

25/05/2018