

IN THE HIGH COURT OF THE UNITED OF TANZANIA

DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND CASE REVISION No. 16/2016.

*(Arising from the District Land and Housing Tribunal Application No.
204/2011)*

MUNICIPAL DIRECTOR

BUKOBA MUNICIPAL COUNCIL ----- APPLICANT

VERSUS

PASCHAL KAMUZORA -----1ST RESPONDENT

THE REGISTERED TRUSTEES

ANGLICAN CHURCH OF TANZANIA ----- 2ND RESPONDENT

RULING

7/3/2018 & 11/05/2018

Kairo, J.

This ruling is the result of the application for revision instituted by the Applicant through the State Attorney, one Haruna Shomary. The Applicant is

praying the court to call for and inspect the records and proceedings of the Land Application No. 204/2011 of the District Land and Housing Tribunal for Kagera at Bukoba in order to satisfy itself on the legality, correctness and propriety of the same and the orders therein. The Applicant is also praying the court to provide for cost and any other order this court would deem just to grant.

The Application was preferred under section 43 of Cap 216 RE 2002 read together with section 79(1) (c) and 95 of the CPC Cap 33 RE 2002 and is supported by the affidavit of the State Attorney, Haruna Shomari who is representing the Applicant.

In his affidavit, the Applicant deposed that, he was the 2nd Respondent in land application No. 204/2011 and that on 20/09/2016, the land application No. 204/2011 was scheduled for defence hearing before the District Land and Housing Tribunal. That the State Attorney arrived at Tribunal early in the morning (around 8:10am) and met the Chairman who informed him that the session would begin at 10:00 am. The State Attorney went on that he informed the Hon. Chairman that at that time he would be appearing before the High Court in the Land Case No. 2/2011 between Majid Teikwa and Others vrs TANROAD & AG presided over by Madam L. G. Kairo and that the matter was scheduled for continuous one week hearing effective 9:00am. That he appeared before the High Court for hearing and the hearing proceeded till 16:00hours. He went on to depose that, he made a follow up at the Tribunal by perusing the court file and found that, the defence case in

Land Application No. 204/2011 was closed for non appearance and consequently the matter was fixed for judgment on 9/11/2016. He concluded that, he is of the view that the Hon. Chairman deliberately arranged to infringe the Applicant's right to be heard.

Both of the Respondents generally disputed the Applicant's sworn statements in their separate counter affidavits contenting that there was no proof that the State Attorney either met the Hon. Chairman or informed him about his absence. Besides he didn't pray for an adjournment, as such the Hon. Chairman had no other option than to close the defence case and fix for judgment. When invited for the oral submission to expand their affidavit and counter affidavits respectively, the State Attorney first prayed the court to adopt his affidavit as part of this application. He further pleaded with the court to find out that the Applicant's right to be heard during defence time at the District Land and Housing Tribunal being the 2nd Respondent was not afforded to him on 20/09/2016 as he deposed in his affidavit.

He clarified that the State Attorney or deponent was supposed to attend the hearing of the case of Majid Teikwa (supra) before Kaio, J. which continued from 9:00am to 4:00pm while the proceeding at the District Land and Housing Tribunal started at 10:00am, thus he couldn't attend both cases on the said date. Nonetheless, the State Attorney wasn't supposed to attend at the District Land and Housing Tribunal as the Tribunal was inferior to the High Court. He went on that, in that respect, it wasn't proper for the District Land and Housing Tribunal to order the closure of the defence case and

schedule for Judgment as if there was no reasonable cause which prevented the State Attorney (Haruna Shomari) from making court appearance. Further to that, all of the time when the matter was being scheduled, the Applicant who was the 2nd Respondent therein would appear despite the facts that sometimes the Chairman or other parties would be indisposed for various reasons. He concluded that there was no justification for the Tribunal to close the defence which resulted to deny the Applicant the right to be heard. He concluded by praying the court to find that the Tribunal wasn't correct in its decision and order the Applicant be heard.

In reply, Advocate Zeddy Ally for the 1st Respondent dismissed the submission by the State Attorney contending the same to lack merits. He also prayed the court to adopt the counter affidavit filed as part of his submission. He argued that, the State Attorney's reason given for his absence in para 3 of his affidavit had no evidence to so verify as there was no affidavit by the Chairman nor any letter from the State Attorney to so state. Advocate Zeddy Ally went further submitting that the State Attorney didn't bring any evidence to verify that on the said date of 20/09/2016, he was before Judge Kairo for land case No. 2/2011 and even if that contention is true, he was supposed to inform the Tribunal accordingly despite it being inferior to the High Court. He argued that the State Attorney was available but failed to appear, thus the Tribunal was correct to close defence case and schedule the same for judgment.

With regards to the argument that the Applicant was denied a right to be heard, Advocate Zeddy Ally argued that the contention which appears in paragraph 5 is an extraneous matter as the same is his opinion and not fact, as such he prayed the court to expunge the same from the affidavit and that even if the court would consider the contention to be a fact, then prayed the court to find out that the State Attorney denied the said right himself and that he is stopped from claiming it now. He thus prayed the court to dismiss the application for want of merits.

Advocate Rugambwa for the 2nd Respondent in his reply decided to rest the matter to the wisdom of the court and prayed the court to give appropriate orders for this application.

As a rejoinder, the State Attorney argued that, the contention that he was appearing before the High Court on the said date is a judicial notice as the case concerned was also before this very court. Thus he doesn't see the need to give evidence to verify the said fact. He went on that the court is not precluded from revisiting its own records being the custodian of the same. He added that the Advocate is not disputing that he was in this court on the said date but only that he want evidence which the State Attorney submitted that the evidence is in the court record. Further to that Advocate Zeddy Ally neither disputed that to be a valid reason.

On the argument that the State Attorney was to come with the Chairman's affidavit, he argued that he was the one who deposed as such the

contention was not hearsay. On the argument that the State Attorney was to bring a letter for notification he submitted that, oral notification sufficed on the circumstance of the said facts as per paragraph 2 of the affidavit and thus the argument that the Tribunal was correct to close defence has no back up. He further argued that the argument that the Applicant has waived his right to be heard is vehemently disputed; otherwise the Applicant wouldn't have come to court seeking for the said right. He concluded by insisting his prayer to have this application be granted.

The court having heard the submission from all of the parties and going through the affidavit and the counter affidavit filed, the main issue for determination is whether the application for revision is sustainable in the circumstances of the matter and hand.

The cardinal principal for revision order is that, the High Court can assume or exercise revision jurisdiction in a case where it appears that there has been an error material to the merits of the case involving injustice **[Refer the case of Zabron Pngalameza vrs Joachim Kiwaraka: (1987) TLR 140]**. The wanting issue for determination therefore is whether there was an error material to the merits of the case involving injustice committed by the District Land and Housing Tribunal.

According to the facts deposed by the Applicant, the State Attorney Mr. Haruna Shomary was assigned to attend the hearing of the case of Majid Teikwa and 19 others (supra) when also the land application No. 14/2011 at

the District Land and Housing Tribunal was set for defence hearing and the same state Attorney was representing the Applicant who was the 2nd Respondent in the said Land Application. The court revisited its records to ascertain whether the said contention by the State Attorney was correct.

Upon going through the said record the court observed that Land Case No. 2/2011 between Majid Teikwa and 19 others (supra) was scheduled for continuous hearing from 19th -23rd September, 2016 which means even the date at issue (20/9/2016) the case was to proceed with the hearing. Further to that the court record also revealed that on the date at issue, the State Attorney Haruna Shomari was at the High Court and the case proceeded as scheduled. The contentious issue is whether the State Attorney relayed any information to the Chairman regarding the contemplated absence at the District Land and Housing Tribunal which was to be caused by the scheduled continuous hearing of the case of Majid Teikwa (supra).

The State Attorney deposed that he orally informed the Chairman. Advocate Zeddy Ally for the 1st Respondent has argued that the State Attorney didn't produce an affidavit of the Chairman to verify that he was so informed or any notice of absence in a form of letter. I asked myself if in the said circumstances, the Chairman would be willing to swear such an affidavit, and answered negatively. With regards to the letter to inform the Tribunal, I am of the view that, since the State Attorney orally so informed the Chairman, the notice sufficed and was enough to serve the purpose having in mind that the State Attorney had a case in a superior court compared to

the Tribunal. Besides, the oral information was not disputed by Advocate Zeddy Ally. I have no base to dispute it either. I thus find and agree that the State Attorney has orally informed the Chairman. As to why he didn't consider the said information before resolving to close the defence matter and fix the case for judgment, that is within the knowledge of the Chairman and I wouldn't want to entertain any speculation. However be what it may, for whatever reason, the action or the said order was an error material to the merit of the case causing injustice to the Applicant. This is so because the action has the effect of denying the applicant a right to be heard as rightly argued by the Applicant. The courts have repeatedly insisted on the right to be heard. In the case of **Halima Hassan Mareale vrs Parastatal Sector Reform Commission and Another Civil Application No. 81/1999 Kissanga J.A** (as he then was) held as follows:-

“the applicant must be afforded such an opportunity even if it appears that he or she would have nothing to say or that what he or she might say would have no substance”.

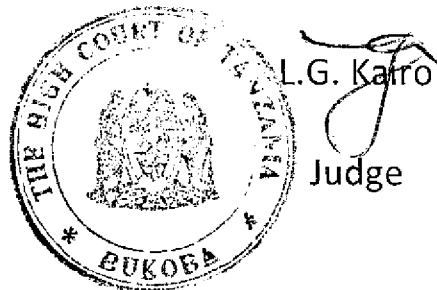
But further to that even the constitution of the United Republic of Tanzania in Article 13 (6) (a) provides for the right to a fair hearing. Thus denying the Applicant of the right to defend the case is to go against the said Article. On top of that a right to be heard is among is also among the principles of natural justice which provides that no one should be condemned unheard.

In order to correct the observed errors, it is imperative to grant the application for revision as I hereby do. The court further orders that the orders of the District Land and Housing Tribunal of the 20/9/2016 to close the defense case and the order for judgment are hereby quashed and set aside. Instead this court orders Applicant be allowed to give its defense. It is further ordered that the file be reverted to the District Land and Housing Tribunal for trial continuation from where it ended before the closure of defence case.

In the circumstances of the case I order no cost.

It is so ordered.

R/A explained.



At Bukoba

11/05/2018