

**IN THE HIGH COURT OF TANZANIA**

**AT BUKOBA**

**LAND REVISION NO.1 OF 2017**

*(Arising from Land Appeal No. 109 of 2014 of District Land and Housing Tribunal Kagera at Bukoba and original from the Civil case No. No. 25/2012 of Isingiro Ward Tribunal)*

**MAMA JOVINA..... APPLICANT**

**VERSUS**

**CALIST ALOYCE ..... RESPONDENT**

**RULING**

**08.06 & 29.06.2018**

**BONGOLE, J.**

By way of chamber summons supported by affidavit made under **section 43(1) of the Land Disputes Courts Act [Cap.216 R.E.2002]**. The applicant moved this court for the following orders:

- 1. That, this Honourable court may be pleased to exercise the general powers vested over it by inspecting the records of the District Land and Housing Tribunal over the material error it had occasioned by dismissing the Appeal during the pendency of the applied order for appointing the*

*Administrator of the estate of the respondent for the substitution of the party and ordering for the execution of the decree after being addressed by the person not the party to the appeal.*

- 2. That, the costs of this Application to follow the event*
- 3. Any other order(s) and relief(s) as this Honourable court may deem just to grant*

The respondent filed a counter affidavit resisting the application. At the hearing before this court the applicant was represented by Mr. Lameck John Erasto learned Advocate while the respondent was represented by Mr. Frank John learned Advocate. By leave of this court the application was argued by way of written submission.

It was the submission of Mr. Lameck in support of the application that at Isingiro ward Tribunal the respondent filed civil case ano.25/2012 alleging that the applicant and other eleven people had encroached into his parcel of land. That from this case the name of the applicant was recorded as Mama Jovina thus the same continued to be adopted the way it is up to this appeal stage.

He submitted that the summons were served by the tribunal on the 30<sup>th</sup> May, 2012 for the respondent to appear before the tribunal on 29<sup>th</sup> June, 2012 and the said summons was served upon one Oscar

Kaneno and Kabereth Runyoro through the Chairman of Nyabisenge sub-village. He argued that according to the said summons he was not personally served as his proper name is Joyce Alchard and not otherwise. He submitted that despite all that, the trial tribunal continued to hear the case *ex parte*. That following this decision, the respondent applied for execution *vide* miscellaneous application No.291/2012 at the District Land and Housing Tribunal of Bukoba whereby the applicant was once again not served but the tribunal granted the application. He submitted that after that application the applicant got notice from Bashemela Auction Mart and Broker informing her that her property was due to be dealt with on ground that she was a decree debtor. That following this notice the applicant with other victims of the exercise applied to the District Land and Housing Tribunal for stay of execution and extension of time to appeal *vide* appeal No.109/2014.

Mr. Lameck went on submitting that on 15<sup>th</sup> June,2015 one Clement Calysit informed the tribunal that his further Calysit had died so the appointment of the Administrator of the estates was under way and that this information was reiterated by the counsel for the applicant though the statement of the informer was not recorded. That this resulted into the tribunal to fix mentioning date pending the appointment of the administrator of the estates.

It was his submission that on 12.09.2016 the applicant attended at the tribunal but they found the office locked as it was the public day that is, Eid- El Haji. That the following date that is, 13.09.2016 one Clemence Calyst moved the court to dismiss the appeal for non-appearance by the applicant. He argued that this was improper as the appeal could not be determined before complying with the order to appoint the Administrator of the estates of Calyist Aloyce. In a way he argued, the tribunal erred in law to dismiss the appeal while there were no proper parties to the appeal/ case.

In reply, Mr. Frank for the respondent submitted that it is the practice that whenever a case is scheduled for hearing, parties must attend. He submitted that since the applicant failed to attend without good cause, the tribunal was correct to dismiss it. He argued that on 12<sup>th</sup> September, 2016 the appeal was scheduled for hearing when the applicant was absent without good cause thus it was right to dismiss her appeal for want of prosecution. He added that it was not true that One Clemence moved the tribunal to dismiss the appeal as contended by the applicant rather; it was the tribunal suo moto which made observation and dismissed the appeal.

Mr. Frank went on submitting that even if a party is dead the matter could proceed on hearing if all the parties were represented.

He argued that the fact that the parties were represented there was no party who was prejudiced. He invited this court to dismiss the application with costs.

Back to the record, it is apparently at page 10 of the typed proceedings that on 15.06.2015 the tribunal was informed that the respondent had passed away so the arrangement for the appointment of the Administrator was under way. This by implication meant that the matter and subsequent proceedings connected to it could not proceed until an Administrator was appointed. Contrary to this, the learned Tribunal Chairman dismissed the appeal on 13.09.2016 while the appointment was not yet completed. More importantly, I have taken note on the Calendar that on 13.09.2016 it is indicated that the Public day that is Eid el Haji was anticipated depending on the appearance of the moon. Mean while the proceedings at page 14 indicates that the appeal had been previously scheduled for mention on 12.09.2016 on which date the applicant through her Counsel and in the affidavit in support of this application argued that she went to the Tribunal but found the office doors closed because of Public day of Eid el Haji. It appears to me therefore that by fixing the matter for mention between these two dates one of which could fall on the Public Day; might have caused confusion to the parties hence

failure to appear on the subsequent. It does not surprise therefore that the record shows that on 13.09.2016 both sides to the case did not appear. However, the learned Chairman dismissed the appeal for non-appearance. Had he considered these circumstances cumulatively and properly he would not have dismissed the appeal for want of prosecution. Mr. Frank learned counsel was emphatic that the tribunal was justified to dismiss the appeal the way it considered for the interest of justice. With due respect to him and in considering the factors surrounding the matter, dismissing the appeal was not for the interest of justice. On the other hand, the argument advanced by Mr. Lameck for the applicant in support of this application is meritorious.

It is for this reason that I find that this is a fit case in which this court can exercise its supervisory and revisional powers under **section 43(1)(b) of the Land Disputes Courts Act [Cap.216 R.E.2002]** . This section bears the following wording:-

*"In addition to any other powers in that behalf conferred upon the High Court, the High Court*

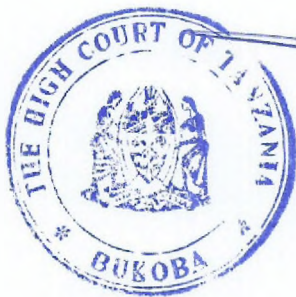
*(a) N/A*

*(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.”*

In exercising the above powers, I hereby quash and set aside the dismissal order by the District Land and Housing Tribunal dated 13.09.2016 and declare all the proceedings on that date null and void. The appeal should be scheduled for hearing before another Chairman with competent jurisdiction in accordance with the law.

Application granted.

Costs to follow the events.



  
S.B. Bongole

Judge

29/6/2018

Date: 29/6/2018

Coram: Hon. S.B. Bongole, J.

Applicant: - Mr. Lameck

- Present

Respondent: Mr. Frank John

B/C: A. Kithama

**Mr. Lameck:**

My Lord, the Application comes for ruling.

**Court:**

Ruling delivered.



  
S.B. Bongole

Judge

29/6/2018