

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND CASE APPLICATION NO. 37/2016

(Arising from Miscellaneous Land Case Application No. 37 Of 2016 Arising Land Case Revision No. 5/2015 And Land Case Appeal No. 9 of 2011, Land Appeal No. 206 of 2010 At Bukoba District Land And Housing Tribunal and Original Application No. 8 of 2010 at Kyaka Ward Tribunal)

FELIX ABEL..... APPLICANT

VERSUS

CLEMENT KAJUBI..... RESPONDENT

RULING

13/08/2018 & 21/09/2018

KAIRO, J

On 29/11/ 2011 the applicant; Felix Abel filed Misc. Application for Revision No. 9 of 2011 praying for an order to revise the order of the District Land

and Housing Tribunal dated 23/11/2011. The said application was dismissed on 09/03/2015 under Order XXXIV Rule 17 (1) of the Civil Procedure Code [Cap 33 R.E. 2002] for non appearance of the applicant.

Following the said dismissal, the applicant has lodged another Land Case Revision No. 5 of 2015 for restoration of the revision application which was dismissed on 09/03/2015. The application was subsequently dismissed on 31/08/2015 for non appearance of the applicant again. The applicant further lodged Land Case Revision No. 15 of 2015 seeking to have the dismissed application restored. The same was struck out on 25/04/2015 for being incompetent before this Court as it was brought under wrong enabling provision of the law.

Still adamant, the applicant decided to lodge the present application by way of a Chamber Summons under Section 43 (1) (b) (2) of the Land Disputes Courts Act No. 2 of 2002 for the grant of the order for restoration of dismissed application. The application is accompanied by the affidavit deposed by the applicant. The same is coached thus:-

- 1. That an order for restoration of dismissed case be made.*
- 2. Any other orders the Hon. Court may be deemed fit to grant.*

The application was refuted by the respondent Clement Kajubi by filing his counter affidavit.

With leave of the court, the application was argued by way of written submissions. Both the applicant and the respondent were unrepresented.

It was the submission of the applicant that his application No. 5/ 2015 was dismissed for non appearance while he was in the court premises but he was not called to attend his case. When asked the court clerk, he was told that his application was dismissed on 31/08/2016 for default of appearance. Thus he prays his application No. 5 of 2015 be restored for the interest of justice.

In reply, the respondent had it that the applicant was absent without good cause since he filed his case in year 2012. As a result, the same was dismissed twice as follows:-

- i. (HC) Land Case Application No. 9/2011 was dismissed on the 9th March 2015 for want of prosecution.
- ii. (HC) Land Case Revision No. 5/2015 was dismissed on 31st August 2015 for want of prosecution.
- iii. (HC) Land Case Revision No. 15/2015 was struck out on 25th day of April, 2016 for wrong citation of the provision of the law.

He refuted the submission by the applicant in that he was present in court premises on 31/08/2016, arguing that normally the court clerk calls the names of the parties before the commencement of the court cases thus he could have heard his name being called by the court clerk if he was around. He charged the said contention to be a lie as he failed even to mention the name of the court clerk. Besides, his claim was not supported by any affidavit to that effect. Further he added that there is no good and sufficient

cause for granting the prayer sought by the applicant. He pleads this court to dismiss the application with costs.

In brief rejoinder, the applicant reiterated his prayer to allow his application and determine who the legal owner of the suit land is.

As already stated, the applicant is seeking this court to grant his prayer for restoration of his application under section 43 (1) (b) (2) of the Land Disputes Courts Act No. 2 of 2002. For easy reference I wish to quote the cited enabling provision as hereunder:-

43. Supervisory and revisional powers

(1) In addition to any other powers in that behalf conferred upon the High Court, the High Court (Land Division)–

(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.

(2) In the exercise of its revisional jurisdiction, the High Court (Land Division) shall have all the powers in the exercise of its appellate jurisdiction.

From the wording of the above provision of the law, the same provides for Supervisory and Revisional powers of the High Court. However the applicant in his chamber summons is seeking the grant of the order for restoration of the application No. 5/2015 which was dismissed for non appearance of the applicant. It goes therefore section 43 (1) (b) (2) of Act No. 2 of 2002 [Cap 216 R.E. 2002] does not clothe this Court with jurisdiction to grant the reliefs sought in the chamber summons. Consequently, I find that the application to be incompetent as the Court has not been properly moved to grant the order prayed by the applicant.

It is settled law that non citation or non citation of the relevant provisions in the chamber summons renders the proceedings incompetent. (See: **Robert Leskar vs. Shibesh Abebe: Civil Application No. 4 of 2006, Court of Appeal of Tanzania, at Arusha.** (Unreported). In the same veins, this application has been rendered incompetent for want of citing proper enabling provision. The same is therefore struck out with costs.

It is so ordered.




L.G. Kairo

Judge

AT BUKOBA

21/09/2018

Date: 21/9/2018

Coram: Hon. J.M. Minde

Applicant: }

Respondent: } Both present

B/C: R. Bamporiki

Court: It is for Ruling and ruling delivered this 21/9/2018 in the presence of both parties.

Sgd: J.M. Minde

21/9/2018

CERTIFIED TRUE COPY OF THE
ORIGINAL



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Deputy Registrar
Bukoba

4/10/2018