IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND CASE APPEAL NO. 70 OF 2016

(Originating from Land Case Application No. 98 of 2007 of the DLHT of Bukoba)

1. **THE REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI ----------1ST APPELLANT**
2. **JACKEM AUCTION MART & COURT BROKER ----------2ND APPELLANT**

VERSUS

1. **PASKAZIA RWEBOGORA ----------1ST RESPONDENT**
2. **RASHID HASSAN SECRETARY OF CCM ----------2ND RESPONDENT**

JUDGMENT

11/12/2019 & 28/2/2020

KAIRO, J.

Being aggrieved by the decision of Bukoba DLHT in Land Case Application No. 98 of 2007 delivered on 13/8/2007, the above named appellants preferred this appeal to impugn the same raising the following grounds:-

(1) *That the Hon. Trial court erred in law by delivering two judgments and two extracted decrees in respect of the single application that is No. 98 of 2007.*

(2) *That the Hon. Trial Tribunal erred both in law and facts to hold that the eviction made by the Appellants to the respondent was un-procedural and that the Respondent's right were infringed.*

(3) *That the trial DLHT erred in law and facts to award compensation and cost to the Respondent after it had found that the Respondent had breached the lease agreements.*

(4) *That the Trial Tribunal erred in law to award compensation in a second judgment to a tune of Tshs. 20mln without explaining the bases for such assessment.*

(5) *That the judgment of the Hon. Trial Tribunal lacks essential ingredients for a proper judgment.*

Wherefore, the Appellants pray that the decision of the Hon. Trial Tribunal be quashed and set aside and this appeal allowed with cost.

The Respondents resisted the appeal and raised two P.Os, couched as hereunder.

(a) *That the memorandum of appeal is incompetent and bad in law for having been drawn and filed contrary to the*

mandatory requirement of Rule 1 (1) of Order XXXIX of the CPC Cap. 33 RE: 2002.

(b) *That the memorandum of appeal is not maintainable in law for having been drawn and filed with parties who are at variance with the original parties as revealed by the amended application as well as the judgment and decree being appealed from and thus sought the court to uphold the POs raised and struck out or dismiss the appeal with cost.*

The 1st Respondent also preferred the cross appeal as well to challenge the decision of the trial tribunal.

When the matter came for hearing on 27/3/2019, the 1st Respondent prayed for disposal of the P.O she rose by written submission, the prayer which was conceded by the Appellant and a schedule was drawn accordingly.

However before the ruling could be delivered, the file was earmarked and fixed for clearance, being a backlog case. The presiding judge then on 15/11/2019 ordered the parties to proceed to argue the appeal by way of written submission as well for expeditious determination of the same and that if the court finds that the P.O. have disposed the matter, the same, will end there but if found otherwise, the court will proceed to determine the appeal and the cross appeal accordingly. By consensus, the parties fixed the schedule to file their written submissions and abide with as ordered.

In the course of composing the ruling for the P.Os raised, the court observed that the Respondent's arguments with regard to the 1st P.O and the Appellant's first ground of appeal both basically point out on the same anomaly which is the presence of two different judgments and decree with regards to a single Application No. 98 of 2007 – though each part uses the said anomaly in her/his favor to justify the argument advanced.

The 1st Respondent argued that the attachment of the two judgments and decree in the Appellant's memorandum of appeal is contrary to order XXXIX R. 1(1) of the CPC, while the Appellant argued that the action of the Tribunal to deliver two judgments and decrees for one application is a serious irregularity.

The court further observed that the outcome of the P.O. if upheld is to render the appeal incompetent and the remedy is to order the struck out of the appeal. But it can be refiled upon rectification.

However the 1st ground of appeal if meritorious has the effect of rendering the proceedings and orders made there from, a nullity.

Much as I am aware that the P.O. need to be determined first but it is with this background that this court in its wisdom decided to deal with the appeal altogether, so as to determine the matter conclusively. Besides, the court also observed that both of the raised P.Os would need evidence to prove, as such they are not purely points of law.

The genesis of this dispute was to the affect that the 1st Respondent in application No. 98 of 2007 sued both Appellants together with the 2nd Respondent herein. It was the Applicant's claim that she is a legal tenant of the 1st appellant whereby she rented a business premises, but the 1st Appellant evicted her from the lease premises through the 2nd Appellant without court order and suffered loss as a results. The DLHT ruled out in her favor on 13/8/2012. The decision aggrieved the Appellant and instituted this appeal to challenge it basing on the above listed grounds of appeal.

In their submissions, the parties are at one that the Chairman delivered two judgments and extracted two decrees for Application No. 98 of 2007 which action is subject to challenge in this appeal.

The court has also observed the presence of two different judgments and decrees for the same application which were all delivered on the same date: that is 13/8/2012.

The Respondent in justifying the presence of the two judgments and decree, submitted that he applied for the correction of the previous judgment through her letter of 23/11/2012 and thus the previous one is not applicable. The Appellants on their parts argued that they are not aware of the said application for correction as they were neither summoned nor informed.

The issue for determination therefore is whether there was an application for correction/amendment of the judgment by the 1st Respondent, and if yes whether the Appellants were so informed.

Generally a judgment once pronounced in open court and signed, is not allowed to be altered or added afterwards, save as provided in section 96 of the CPC (supra) or during review (as per Order XX R(3) of the CPC (supra).

The circumstance under which the alteration can be made as provided under Section 96 are as follows and I wish to quote in verbatim:

Section 96:

> *"Clerical or arithmetical mistakes in judgments decrees or orders, or errors arising from any accidental slip or omission may, at any time be corrected by the court either of its own motion or on the application of any of the parties".*

The 1st Respondent has argued that she had applied for the correction of the said judgments by a letter. However no such a letter was seen in the court record and was neither attached by the 1st Respondent in her submission. It is the stance of law that he who alleges must prove [See 110 of the Law of Evidence Act Cap. 6 RE. 2002]. Besides both judgment shows to be of 13/8/2012 while the alleged letter seeking correction was of 23/11/2012, which means the correction was made before the alleged application, thus the contention by the 1st Respondent negates what transpired. Leaving that aside, the law provides that any application is to be by chamber summons supported by an affidavit which has to be served to the opposite party. Thus

even if the said letter would have been present, the same doesn't amount to a legal application in the circumstances of this matter. The reason for the said requirement is not far-fetched; that is to give the opposite party the opportunity to react on the application. Failure to comply with the said requirement has rendered the purported application *void ab-initio*.

It is also imperative to note that even if the Tribunal would have amended the judgment *suo mottu,* still the requirement of calling parties cannot be dispensed with. The issues were thus answered negatively. It is the finding of this court therefore that the 1st ground of appeal is with merit as there was no correction of mistake made to the previous judgment whatsoever. The presence of two distinct judgments for one application has caused confusion on the Appellants and made them uncertain as to which judgment and decree to ground their appeal; the state which is a serious irregularity which cannot be left to stand, with due respect to the Chairman of the trial tribunal.

The first ground having found to have merit suffices to dispose this appeal. However I wish to comment albeit briefly on the further observed anomalies on the attacked two judgments: specifically on the part of the award given.

In one of the judgments (both have same dates), the Tribunal was awarded as follows:-

"---this tribunal holds:-

1. *That the application is partly allowed.*

2. *The 1st Respondent is at liberty to terminate the contract since the applicant breached term of the agreement.*
3. *The Applicant be redressed for the loss occasioned in that unlawful eviction.*
4. *Since both parties are at fault, then each party to bear its own cost.*

Order accordingly".

In the other judgment it was stated on the award *"---this Tribunal hold as follows:-*

1) *That the Application is partly allowed.*
2) *The 1st and 3rd Respondents are at Liberty to terminate the contract since the Applicant breached term of the agreement.*
3) *The Applicant be redressed for the tune of Tshs. 20,000,000/= (Twenty Million) by the Respondents being compensation for damages, and loss occasioned in that lawful eviction, plus 31% interest as prayed in the amended application.*
4) *Since both parties are at fault. Then each party bears its own costs.*

Order accordingly."

Looking at the two versions on the award part to the 1st Respondent, it is vivid that, the 1st Respondent award differs in the above shown judgments.

Besides they all bear the same date of 13/8/2012 as such even if there would have been an application for amendment to which there was none, the two documents would have still be confusing for not knowing which one was the amended version.

But on top of that, the alleged correction is out of the purview of the provision of Section 96 of the CPC (supra) as it is neither clerical nor arithmetical but new a version all together, which is prohibited under the law. Thus a judgments with such serious irregularities cannot be left to stand as earlier stated.

The court has thus found the appeal to have merit and accordingly allow it and orders as follows:-

(1) That the proceedings, decision and decree therein in Application No.98 of 2007 of the DLHT of Bukoba are hereby quashed and set aside, save for the pleadings which are ordered to be left undisturbed.

(2) That it is hereby ordered for the maintenance of the case file number.

(3) That the case file is ordered to be reverted to the DLHT for Bukoba within one month from the date of this decision.

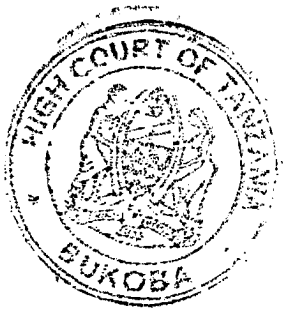
(4) The application is ordered to proceed before another chairman and new set of assessors.

(5) The application is ordered to be heard and determined within a year from the date of this decision, being a long time matter.

(6) Cost to be in the cause.

It is so ordered.

R/A explained



L.G. Kairo

JUDGE

28/2/2020

Date: 28/2/2020

Coram: Hon. J.P. Kapokolo, Ag DR

1st Appellant: } Adv. Matete, Esq.

2nd Appellant: }

1st Respondent: Present

2nd Respondent: Absent

C/C: R. Bamporiki

Adv. Matete: For judgment we are ready.

Court: Judgment delivered on the presence of Adv. Matete today and 1st Respondent.

Sgd: J.P. Kapokolo Ag, DR.

28/2/2020