



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 63/2018

*(Arising from Bukoba District Land and Housing Tribunal in application No.
172/2013)*

JOSEPH NDYAMUKAMA.....APPELLANT

VERSUS

GAUDENSIA KAIZILEGE.....RESPONDENT

JUDGMENT

Date of last order 28/05/2020

Date of judgment 29/05/2020

N.N. Kilekamajenga, J.

The appellant, being aggrieved by an exparte judgment of the District Land and Housing Tribunal of Bukoba, appealed to this Court seeking for justice. The appellant coined seven grounds of appeal thus:

- 1. THAT, the learned chairman did not invite the assessors' opinions nor consider their views in the delivered judgment.*
- 2. THAT, the respondent did not prescribe the location of the suit land hence the decree thereto cannot be executed for want of certainty.*
- 3. THAT, the said sale contract which disposed the suit-land to the respondent was made by no – existing personality in the name and style of "sisi familia ya marehemu F. K. Burengelo..."*

4. *THAT, the purported vendor had no mandate to dispose the suit-land to the respondent in the absence of the duly appointed administrator of estate of the late Fredrick Kyonga Bulebgero.*
5. *THAT, the said sale contract was admitted in evidence without being affixed with stamp duty*
6. *THAT, the purported sale transaction was witnessed by persons whom were not called as witness hence the Court was entitled to draw adverse inference that there was nothing.*
7. *THAT, the respondent did not prove her suit on balance of probability;*

When the appeal was called for hearing, the appellant appeared in person and was represented by the learned advocate, Mr. Chamani. On the other hand, the learned advocate, Mr. Joseph Bitakwate appeared for the respondent. During the oral submission, Mr. Chamani informed the Court that the respondent sued the appellant in the District Land and Housing Tribunal for Bukoba. The application/case was heard exparte. The appellant, being aggrieved by the decision of the tribunal, appealed to this Court. Mr. Chamani further argued that the exparte judgment which was delivered on 24th January 2014 did not comply with the requirements of **Regulation 20(1) of GN. No. 174 of 2003** which requires the judgment of the tribunal to be brief, written in simple language and shall consist of brief statement of facts, findings on the issues, decision and reasons for the decision. He finally urged the Court to quash the proceedings of the tribunal and the decision thereof and remit the case to the tribunal for retrial.

Mr. Chamani was also of the view that the parties should bear their own costs of the appeal.

On the other hand, the learned counsel for the respondent supported the submission by the counsel for the appellant. He also informed the Court that the tribunal's decision does not worthy to be called the judgment under the law. He urged the Court to quash the decision and allow the parties to bear their own costs.


I have carefully considered the submission from the counsel for the appellant which was also supported by the counsel for the respondent. I have also perused the judgment of the trial tribunal and observed some glaring anomalies. **First**, the judgment which determined the parties' rights is contained in two printed pages. The first page contains some issues and the decision is stated in half a page. **Second**, the chairman never raised issues in the proceeding though three issues appear in the judgment. Again, the chairman did not discuss the issues in the judgment. **Third**, though the case was heard exparte, there is no analysis of the evidence in the judgment. **Fourth**, the respondent seemed to prove the case on the balance of probability on the evidence contained on half a page. Thereafter, she tendered some documents which were admitted. **Fifth**, the chairman did not invite the assessors to opine on the case. So, their opinions do not feature in the judgment. With respect, the judgement of the tribunal is not

worthy to be called the judgment under the law. I do not need to reiterate the contents of the judgment required by the law because the chairman, being a lawyer, ought to know how the judgment should be composed.

On the other hand, I commend the counsel for the respondent, who with the view of assisting the Court is doing justice, conceded on the fact that the judgment of the tribunal is worthless and poorly composed.

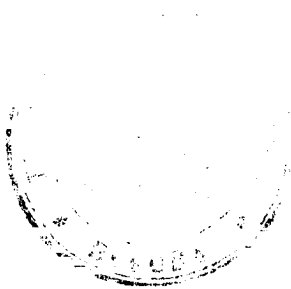
I understand, the case was heard in absence of the appellant, still there is no proof whether the respondent successfully proved the case to the required standard (on the balance of probability). As stated earlier, the analysis of evidence is lacking in the whole judgment. For the interest of justice, there is a need to quash the proceedings of the trial tribunal so that the matter may be heard on merit. I therefore, quash the proceedings of the trial tribunal and set aside the decision thereof. The case should be retried before another chairman and before another set of assessors. The parties should bear their own costs of this appeal. Order accordingly.

Dated at Bukoba this 29th May 2020


Ntemi N. Kilekamajenga
Judge
29th May 2020.

Court:

Judgement delivered in the Court's chamber in the presence of the learned advocate, Mr. Joseph Bitakwate for the respondent also holding brief for Mr. Chamani (Adv).




Ntemi N. Kilekamajenga
Judge
29th May 2020.