

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 18 OF 2020

(Arising from District Land and Housing Tribunal in Land Appeal No. 162 of 2016,
Before; F. Chinuku, Chairperson Originating for Titye Ward Tribunal Land Case No. 4
of 2016)

STANLEY BHAKUNDA.....APPELLANT

VERSUS

NICOLAUS MWINGO.....RESPONDENT

JUDGMENT

23/2/2021 & 23/02/2021

A. MATUMA, J

The appellant successfully sued the Respondent in the Ward Tribunal for recovery of Land allegedly trespassed by the respondent. The respondent was aggrieved and thus appealed to the District Land and Housing Tribunal for Kigoma which heard the appeal exparte against the appellant and adjudged for the respondent.

The Appellant in the service for Mr. Ignatius Kagashe learned advocate has preferred this appeal with six grounds of appeal but for the purpose

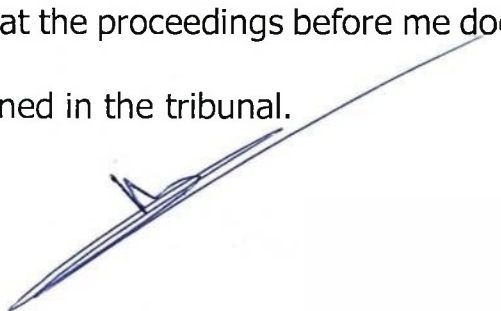
of this judgment only one ground was argued which challenged the true status of the proceedings of the appellate tribunal.

Mr. Ignatius Kagashe argued that the respondent having lodged his appeal to the District Land and Housing Tribunal deserted it until on 22/11/2018 when the same was dismissed for want of prosecution. His client wrote to the tribunal to be supplied with the dismissal order which he referred to as the judgment and then relaxed knowing that the respondent's case was dismissed. To his surprise he came to learn out that the case has been heard exparte against him.

The learned advocate shown this Court the appellant's letter which was dully endorsed by the District Land and Housing Tribunal to have been received in which the appellant explained the dismissal of the appeal by the respondent and asked for the so called "Judgment".

On my perusal of both the typed and original proceedings, I did not see the coram dated 22/11/2018 to satisfy myself as to whether that appeal was in fact dismissed for want of prosecution.

I therefore, asked Mr. Abdulkher learned advocate for the respondent to assist me on the allegations that the proceedings before me does not bear the true status of what happened in the tribunal.



I wanted from him to know the corams of attendance in the tribunal which he has in his file as he represented the respondent in the District Land and Housing Tribunal.

The learned advocate stated that according to his records he has the coram of 22/3/2018 for mention, 18/4/2018 for mention, 21/6/2018 for mention, 19/12/2018 for mention, 10/7/2019 for hearing, 20/8/2019 for hearing, 29/10/2019 for hearing, 04/11/2019 for hearing, 29/1/2020 for hearing, 15/4/2020 for hearing 02/6/2020 for hearing, and 23/6/2020 for hearing and it was this date when the appeal was heard exparte against the appellant.

I have cross checked the original proceedings, they do not bear some corams the respondent's advocate has in his records. That is clear indication that the proceedings of the District Land and Housing Tribunal does not reflect the true status of what transpired thereat.

Even on 2/6/2020 the chairman ordered the respondent/appellant to be notified of the hearing date and fixed hearing of the matter on 23/6/2020.

When it got 23/6/2020 the appellant was absent but the respondent was present through his advocate Mr. Abdulkher Ahmad.

It is on that day the appeal was heard with no any order of exparte hearing nor any explanation as to whether the appellant was dully served

or notified of the hearing date as it was ordered by the tribunal itself on 2/6/2020.

To cut a story short, the proceedings of the District Land and Housing Tribunal bears unpleasant features to the detriment of justice to the parties in particular, the Appellant.

Even the coram of 19/12/2018 does not trace its origin. The records do not show when did the tribunal order the matter to come on 19/12/2018. This also signify that some corams are missing and I don't know what transpired on those corams. In the case of **Editor, Majira News Paper and 3 others versus Rev. Fr. Riccado Enrico Riccion and 26 others**, Civil Appeal No. 35 of 2013, the Court of appeal held that when the records of the lower Court bear some unpleasant features, the appellate Court is entitled to invoke its revisional powers to remedy the situation. I did the same in the case of **Elikana Bwenda versus Sylvester Kuboko**, Civil Appeal No. 7 of 2020 in the High Court at Kigoma.

With this observation, I find that the proceedings of the District Land and Housing Tribunal does not reflect the true records sufficiently to enable this Court to justifiably determine this appeal in the interest of justice.

I therefore invoke my Revisional Powers, quash the proceedings thereof and set aside the decree and judgment.

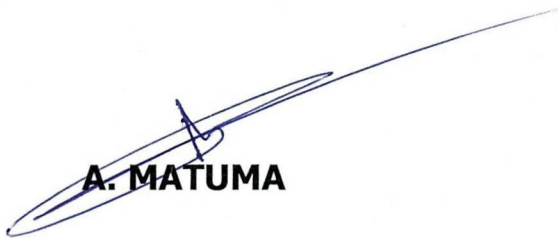
I order the Respondent's appeal at the District Land and Housing Tribunal to be re-heard by another chairman with a new set of assessors.

In the meantime, the judgment of the trial Ward Tribunal is restored until dully vacated on appeal in the District Land and Housing Tribunal.

In the circumstances of the matter, I order no costs to either party.

It is so ordered.




A. MATUMA

JUDGE

23/2/2021

Court: Judgment delivered this 23rd day of February, 2021 in the presence of the Appellant in person and his Advocate Mr. Kagashe and in presence of Respondent in person and his Advocate Mr. Abdulkher Ahmad.

Sgd: A. MATUMA

JUDGE

23/2/2021