

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE REVISION NO. 4 OF 2019

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Misc. Land Application No. 127A of 2017 & original in Land Application No. 127 of 2019)

JOSEPH TIGUSAINÉ ----- APPLICANT

Versus

1. FURGENCE ICHUCHUZA
2. JOVIN ICHUCHUZA } ----- **RESPONDENTS**

RULING

10/03/2021 & 11/03/2021
Mtulya, J.:

In the present Revision Mr. Joseph Tigusaine (the Applicant) approached this court on 20th June 2019 praying for inspection of the record in the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Misc. Land Application No. 127A of 2017** (the Misc. Application) in order to satisfy itself of the legality of the decision. According to the Applicant, if this court finds any illegality in the Misc. Application of the Tribunal, restore the *Ex-parte Judgment* and *Decree* of the Tribunal in **Land Application No. 127 of 2009** (the Application).

When the Revision was scheduled for hearing on 10th March 2021, the Applicant invited the legal services of Mr. Mathias Rweyemamu to argue the Revision for him. Mr. Mathias was short and clear on the submission in favour of the Revision. He briefly submitted that the decision of the Tribunal in the Application was delivered by Hon. Chairman Chanya on 9th August 2012, but was set aside by Hon. Chairman Mogasa on 19th February 2019 after seven (7) years in the Misc. Application without involvement of assessors. Mr. Mathias argued further that the record does not display how Hon. Chairman Mogasa came into the proceedings or reasons of his introduction in the proceedings, which is contrary to the law. According to Mr. Mathias, proceedings of this nature must be set aside and the Ruling from the same proceeding be quashed forthwith.

On the other hand, Mr. Fulgence and Jovin Ichuchuza (the Respondents), who appeared themselves without any legal representation submitted briefly that the proceedings in the Application are supposed to be nullified as the Hon. Chairman Chanya proceeded with the hearing and determination of the Application whilst well aware that the First Respondent in the Tribunal, Mr. Wilbard Ichuchuza, had expired before the Application

was initiated. According to the Respondents, they had informed Hon. Chairman on the death of Mr. Wilbard Ichuchuza and procedures in appointment of an administrator to stand for the deceased, but Hon. Chairman denied the right to be heard to the administrator and other Respondents in the Application hence preferred *Ex-parte* Proceedings and Ruling. The Respondents submitted further that even the order to proceed *Ex-Parte* was granted illegally as they were not summoned to appear in the Tribunal during delivery of the decision.

In a brief rejoinder, Mr. Mathias conceded that there are faults in the order of the Tribunal in the Application delivered on 22nd September 2010, which in any case it was silent on the prayer of the Second Respondent in the Tribunal. Following that admission, Mr. Mathias supported the submission of the Respondents and prayed the proceedings in the Application be nullified in favor of straight record.

On my part, I glanced and inspected the record in both applications in the Tribunal, **Application No. 127 of 2009** and **Misc. Application No. 127A of 2017** determined by the Tribunal. The record in **Application No. 127 of 2009** shows that there is an *Ex-Parte Judgment* delivered on 15th February 2013 and received

certification on 20th February 2013. It was delivered by Hon. Chairman R.L. Chenya. The proceedings of 26th August 2009 shows that the Fourth Respondent reported on the death of the First Respondent as depicted at page 2 of the proceedings. The same report is shown at page 6 of the proceedings conducted on 22nd September 2010. On 20th June 2011, the Third Respondent reported filing of the Probate and Administration Cause, as depicted at page 8 of the proceedings. On 22nd September 2010, the Second Respondent prayed for four (4) months period to bring an administrator of the deceased's estates, but the Tribunal was silent on the prayer, although it was not protested by Mr. Mathias. However, on 27th January 2012, Mr. Mathias prayed for *Ex-parte Hearing* as is shown at page 10 of the proceedings, and was granted by learned Chairman R. Leonard and the Tribunal proceeded *Ex-parte*.

However, the record is silent on what transpired to the Respondents and letter of administration or appointment of the administrator. Record shows further that *Ex-parte Hearing* started on 7th August 2012 by Hon. Chairman R. Leonard and on 9th August 2012, Hon. Chairman R.L. Chenya took over the proceedings without assigning any reasons on how he come into the proceedings, and on

15th February 2013, he rendered down the *Ex-part Judgment*. However, proceedings of the Tribunal conducted on 21st December 2017, shows that **Misc. Application No. 127 of 2017** was registered in the Tribunal to set aside the *Ex-part Judgment*, which was granted on 19th February 2019 by Hon. E. Mogasa without involvement of assessors and reasons of his intervention in the proceedings. Finally, Hon. Chairman Mogasa ordered the Application be heard *Inter-Partes*. It is from this Ruling, the Applicant rushed to this court asking this court to inspect and give necessary orders.

From what I have displayed in this application, it is obvious that there are complaints on the right to be heard by the parties and continuation of the proceedings without clear status of the administrator of the deceased's estates. In situation like this one, and considering all defects and irregularity shown in this Revision, there is no any possibility the proceedings in both applications can stand. They are full of illegalities from denial on the right to heard, taking over-proceedings without proper procedure to the denial of opinions from learned assessors of the Tribunal.

The right to be heard is not only part of the principle of natural justice but also a human rights issue. It is currently found in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania**

[Cap. 2 R.E. 2002] and received interpretation in our superior court of the land in a bundle of precedents (see: **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002; **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018; **Judge In Charge, High Court at Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44); **The Principal secretary, Ministry of Defense and National Defence v. Valambia** [1992] TLR 387; and **Yazidi Kassim Mbakileki v. CRDB (1996) LTD & Jackem Auction Marts and Court Brokers**, Civil Reference No. 14.04 of 2018). In that regard, any breach of the principle, especially in cases like the present one where there are glaring illegalities, the proceedings must be set aside and decision quashed.

On the other hand, the decision in Misc. Application was determined contrary to the law in sections 23 (1) & (2) and 24 of the **Land Disputes Courts Act** [Cap.216 R.E.2002] which require Hon. Chairman to sit with not less than two assessors. The two sections have received judicial consideration in the precedents of this court in **Elia Alphonse v. Idrisa Salimu**, Misc. Land Case Appeal No. 36 of 2012 and the Court of Appeal in **Awiniel Mtui &**

Three Others v. Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo), Civil Appeal No.97 of 2015.

In conclusion, I have formed an opinion to set aside proceedings and quash decisions in both **Application No. 127 of 2009** and **Misc. Application No. 127A of 2017** of the Tribunal for want of proper record, as I hereby do. No orders as to the costs as the illegalities were partly attributed by the parties themselves and blessed by the Tribunal.

It is so ordered.



F.H. Mtulya

Judge

11.03.2021

This Ruling was delivered in chambers under the seal of this court in presence of the Applicant Mr. Joseph Tigusaine and in the presence of the Respondents, Mr. Furgence Ichuchuza and Mr. Jovin Ichuchuza.



F.H. Mtulya

Judge

11.03.2021