

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

**AT BUKOBA**

**LAND CASE REVISION No. 13 OF 2019**

*(Arising from the High Court (Bukoba District Registry) in Land Case Appeal No. 11 of 2011 & Misc. Land Case Appeal No. 18 of 2011; and District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 88 of 2008)*

**AUDAX M. TIBANYENDELA ----- APPLICANT**

Versus

**HAMZA SUED**

**ELI KULYA**

**HAMIDU KUSHEKA**

**MURTAZA MAHYORO**

**RAMADHANI MOHAMED**

**AMDANI HAMADA**

**AMIDU KAMBUGA**

**TASILIMA HASSANI**

**ZAIDI ABDUL**

**KASSIM AHAMADA**

**MWL. RUTA TIBISHUBWAMU**

**----- RESPONDENTS**

**EX-PARTE RULING**

19/02/2021 & 22/02/2021

**Mtulya, J.:**

This is an application lodged by Mr. Audax M. Tibanyendela (the Applicant) praying for revision of the decision of the **District Land and Housing for Kagera at Bukoba** (the Tribunal) in **Application No. 88**

**of 2008.** The complaint registered by the Applicant is displayed in paragraphs 8 & 9 of his Affidavit, which, in summary states that:

*...the Chairman [of the Tribunal] alleged to have received complaints from various people who were not parties to the proceedings and decided to act on that by summoning the applicant for necessary orders...the applicant together with his advocate attended before the Tribunal...the Chairman informed the applicant and his advocate that the complaint of Mr. Rugemalira Alfred, Amos P. Mpaya, Ismail Ahamada Banoba and Anderson Lazaro had reached to the Tribunal through District Commissioner's office with instructions to intervene the situation by visiting the site for satisfying himself with execution process which was performed by Jackem Auction & Court Broker. The allegation was resisted by the applicant's Advocate who advised the complainants to file independent objection proceedings rather than political forum...*

According to the Applicant, the Chairman in his own motion decided to visit the land on 15<sup>th</sup> May 2017 in absence of the Applicant

and his Advocate and on the next day, 16<sup>th</sup> May 2017, delivered a ruling in the same **Application No. 88 of 2008** and nullified the execution order granted by another chairman in the same Application. The Applicant stated further that following the nullification, the Chairman reported the steps taken and decision of the Tribunal to the District Commissioner of Bukoba.

This Application was scheduled five (5) times for mention in search of the Respondents to have their right to be heard. However, the Respondents could not enter their presence. On 19<sup>th</sup> February 2020, this court ordered *ex-parte* hearing following a prayer registered by the Applicant's learned counsel, Mr. Ali Chamani and proof of service to the Respondents. During the hearing of the Application, Mr. Chamani prayed the chamber summons and Applicant's Affidavit be adopted to form part of the proceedings and briefly submitted that there are irregularity and illegality in the decision of the Tribunal in **Application No. 88 of 2008** delivered on 16<sup>th</sup> May 2017.

With irregularity, Mr. Chamani contended that the way the Respondents initiated proceedings through political forum through Bukoba District Commissioner was not proper. To his opinion, the Chairman was influenced by the pressure inserted to him by the District

Commissioner hence altered the initial decision of another chairman with similar mandate delivered on 9<sup>th</sup> May 2011. Mr. Chamani submitted further that the decision of the Tribunal in **Application No. 88 of 2008** delivered on 9<sup>th</sup> May 2011 was already executed and if there was any protest, it was supposed to be registered by way of objection proceedings.

On illegality, Mr. Chamani submitted that the decision of the Tribunal in **Application No. 88 of 2008** delivered on 16<sup>th</sup> May 2017 did not comply with the requirement of the law in section 23 & 24 of the **Land Disputes Courts Act** [Cap. 216 R.E 2002] (the Act). According to Mr. Chamani, the Tribunal sat and decided the Application without involvement of assessors. In his prayers, Mr. Chamani, submitted that following the irregularity and illegality, this court may quash the decision of the Chairman delivered on 16<sup>th</sup> May 2017, restore decision and decree of the Tribunal delivered on 9<sup>th</sup> May 2011 and confirm the Execution Report of 25<sup>th</sup> March 2017 registered by Jackem Auction Mart and Court Broker.

I perused the record of this revision. The record shows that on 17<sup>th</sup> April 2008, the Applicant filed **Application No. 88 of 2008** before the Tribunal. In his Application, the location and address of the suit

premises is stated to be: Kifungwa, Kyaya Street, Kahororo Ward in Bukoba Municipality. However, no specific size and boundaries or neighbours were stated in the Application. Similarly, during the hearing for *ex-parte* proof conducted between 19<sup>th</sup> October 2010 and 4<sup>th</sup> March 2011, as depicted at page 10 to 15 of the proceedings, the Applicant did not mention specifications of the land in dispute as per requirement of the law in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 (the Regulations) and precedents of this court in **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Rev. Francis Paul v. Bukoba Municipal Director & 17 Others**, Land Case No. 7 of 2014; **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018; **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018; and **Simeo Rushuku Kabale v. Athonia Simeo Kabale**, Civil Appeal No. 6 of 2019.

The trend on failure to identify specification of the land in dispute is further depicted in the Ex-Parte Judgment of the Tribunal delivered on 9<sup>th</sup> May 2011. The judgment of Tribunal declared the Applicant as a rightful owner of the suit land without mentioning exact size, location and boundaries, despite noting that the land is defined with lake shore.

The text of the Tribunal in that regard is found on page 5 of the judgment and for purpose of clarity, I quote:

*It appears in my opinion that the land in dispute is or partly within the sixty meters of the protected area of the lake shores. Let that be as it may, we hereby allow the application by declaring him as the lawful owner of the suit land, save the areas concerned under section 57 (1) of the Environmental Management Act, No. 20 of 2004.*

It is this lack of specification that caused confusion during execution of the decision of the Tribunal in **Application No. 88 of 2008** delivered on 9<sup>th</sup> May 2011 hence five (5) persons, namely Rugemalila, Amon P. Mpanju, Anthony Rwekaza, Ismail Ahmada Banoba and Anderson Lazaro complained before the District Commissioner and Tribunal alleging that the execution affected their lands and developments attached in the lands.

It was unfortunate that, the protesters did not prefer objection proceedings as per requirement of the law. It is also disastrous that the Tribunal also proceeded with the hearing of the complaint and delivered a decision on 16<sup>th</sup> May 2017. It is also sad that the Tribunal sat and decided the Application without inviting assessors as per requirement of

the law in section 23 & 24 of the Act and precedents of this court in **Moses David v. Alouis Anthony Ghiselli**, Land Appeal No. 16 of 2017; **Kasanga Shabani v. Kasanga Hasani & Another**, Land Appeal No. 2 of 2018; and the Court of Appeal's decision in **Edina Adam Kibona v. Abdallah Swebe**, Civil Appeal 286 of 2017.

I am surprised by the statement of the Chairman at page 6 of the Ruling of the Tribunal that:

*...the area which was actually in dispute is quietly different from the area where the alleged houses were demolished*

I am surprised because the Tribunal in **Application No. 88 of 2008** decided on 9<sup>th</sup> May 2011 had no land specifications in terms of size and boundaries. Even the proceedings of the Tribunal conducted between 17<sup>th</sup> April 2008, (when the case was filed) and 4<sup>th</sup> March 2011 (when the Applicant's case was closed), no display of visitation of the disputed land by the Tribunal.

I must say, this is one of the unfortunate suits lodged in this court for revision. It started in 2008 to date, which is almost thirteen (13) years without an end. It has been decided twice in the Tribunal and three (3) times in this court. It has engaged the efforts and time of

learned judges of this court since 7<sup>th</sup> June 2011. It is disgracing to learn that the suit has been filed and withdrawn in this court with distinct reasons since 2011.

In **Land Appeal No. 18 of 2011** filed on 7<sup>th</sup> June 2011, the Applicant and Respondents prayed in this court to settle the matter out of the court and the order was granted. The appeal was withdrawn. On 7<sup>th</sup> July 2014, the Applicant preferred **Misc. Land Case Application No. 20 of 2014**. However, during the proceedings, the Applicant's learned counsel prayed for withdrawal without costs, and was granted. On 29<sup>th</sup> November 2017, the Applicant preferred **Misc. Land Case Application No. 80 of 2017**, Applicant's learned counsel prayed to withdraw the Application to rectify the chamber summons with leave to refile, and was granted. On 12<sup>th</sup> June 2017, the Applicant lodged **Land Case Revision No. 11 of 2017**, and his learned counsel also prayed to withdraw with leave to refile to rectify the defects in the Affidavit. Both prayers were granted, leave to withdraw and liberty to refile the revision hence the present **Land Case Revision No. 13 of 2019** filed on 30<sup>th</sup> December 2019.

In final analysis, I am constrained to remind parties and learned counsels in land contests that land disputes concerns ownership of



certain piece of land distinguished with other lands in terms of size and location. With location, it also includes all that surrounding the land including neighbors, pegs, sea shores, lake shores, river banks, roads, forest, et cetera, which are capable of distinguishing applicants' lands from other lands. As the application registered on 17<sup>th</sup> April 2008 in **Application No. 88 of 2008** before the Tribunal by the Applicant was not specific in terms of the size and location, and considering the decision of the Tribunal in **Application No. 88 of 2008** delivered on 16<sup>th</sup> May 2017 was tainted with obvious irregularity and illegality, both decisions cannot stand in this court.

The law in Regulation 3 (2) (b) of the Regulation and cited precedents in this Ruling require specification of land in dispute before the decision on the dispute on land is determine. Similarly, precedents of the Court of Appeal oblige courts to open their eyes and ensure proper application of the laws in subordinates' courts. In the decision of **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, the Court at page 11 & 12 of the typed decision stated that:

*We wish to point out that, the Court cannot normally justifiably close its eyes on glaring illegality in any*

*particular case because **it has a duty of ensuring proper application of the laws by the subordinates courts ...we think, the superior courts have the additional duty of ensuring proper application of the laws by the courts below...** for the interest of justice, the Court has a duty to address a vivid illegality and that cannot justifiably close its eyes thereof.*

(Emphasis supplied)

On my part, I think, where there is obvious breach of the law in statute and precedents of our superior courts, this court cannot hesitate to quash decisions of the lower court and tribunals. In the present revision there are obvious breach of the law. Both decision of the Tribunal, decided on 16<sup>th</sup> May 2017 and 9<sup>th</sup> May 2011, must be quashed in search of certainty of land and justice to the parties, their learned counsels and this court.

Having said so, I hereby quash the Ex-Parte Judgment in **Application No. 88 of 2008** delivered on 9<sup>th</sup> May 2011 and Ruling originated from the same Application delivered on 16<sup>th</sup> May 2011, and set aside both decrees emanated from the two named decisions. As the

Respondents did not enter their appearance to protest the Application,  
no order as to the costs. Each party shall bear its own costs.

Ordered accordingly.




  
F.H. Mtulya

**Judge**

22.02.2021

This Ruling was delivered under the seal of this court in presence  
of the Applicant, Mr. Audax M. Tibanyendera with his learned counsel,  
Mr. Ali Chamani.



  
F.H. Mtulya

**Judge**

22.02.2021