

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

LAND CASE REVISION No. 1 OF 2018

(Arising from the High Court (Bukoba Registry) in Misc. Land Application No. 1 of 2020; the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 239 of 2012 & Application for Execution No. 238 of 2016)

RAMADHAN HUSSEIN ----- APPLICANT

Versus

IMELDA ABDALLAH ----- RESPONDENT

RULING

04/03/2021 & 11/03/2021

Mtulya, J.:

A complaint on a right to be heard was registered in this court on 16th January 2018 by Mr. Ramadhani Hussein (the Applicant). The Applicant invited this court to hear and decide his complaint under the authority in section of section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2002] (the Act) and section 79(1)(c) & 95 of the **Civil Procedure Act** [Cap. 33 R.E. 2002] (the Code) to call and inspect the record to satisfy itself on legality, correctness and propriety of the decisions **Application No. 239 of 2012** and **Application for Execution No. 239A of 2019 & No. 238 of 2016** determined by the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal).

Reading paragraphs 5 to 10 of the Applicant's Affidavit, the Applicant states that he was denied right to be heard in three (3) decisions of Tribunal, namely: **Application No. 239 of 2012, Application for Execution No. 239A of 2012 & Application for Execution No. 238 of 2016** (the Applications). To his opinion, he was condemned unheard by unknown reasons of the Tribunal for hearing **Application No. 239 of 2012** without issuing him a notice to appear and dismissed his protests in **Application for Execution No. 239A of 2012 & Application for Execution No. 238 of 2016**.

When the Revision was scheduled for hearing on 4th March 2021, the Applicant who is a lay person without any legal representation, submitted briefly that the Tribunal decided the applications without giving him a right to be heard. To substantiate his claim, the Applicant submitted that in the **Application No. 239 of 2012**, the Respondent initiated proceedings, but did not summon him to appear to defend the Application from the beginning to the final determination of the suit. With regard to the **Application for Execution No. 239A of 2012**, the Applicant submitted that he was not involved until when execution was imposed in his house. According to the Applicant he has never been served to appear to defend both the Application and Application for Execution which were determined at a

his detriment. The Applicant submitted further that during the whole period of the proceedings in the Tribunal, he was serving as Mbatama Hamlet Chairman in Ibwera Village within Ibwera Ward of Bukoba Rural District where his house is located and had never seen any summons being served or affixed in his residence. To his opinion, it was impossible for any legal proceedings to be initiated to any person in the hamlet of control without his knowledge as hamlet chairman.

In reply of the complaint, Ms. Imelda Abdallah (the Respondent) contended that summons were issued via Ibwera Ward Executive Officer (WEO), Mr. Jonathan and the Applicant was aware of the summons, but decline to exercise his right to be heard. According to the Respondent, the Applicant was a powerful member in Ibwera area and therefore it was difficult to serve him directly hence she preferred WEO and affixation in Applicant's house. In a brief rejoinder, the Applicant submitted that hamlets chairmen are under the authority of WEO and therefore it is impossible for the WEO to fear their subordinates in serving summons.

I have perused the record of this Revision. The record shows that on 10th August 2012 the Respondent approached the Tribunal

and lodged **Application No 239 of 2012** against two persons, namely: Imelda Lubago and Ramadhan Omary. The Respondent claimed for vacant possession of the disputed land located at Mbatama suburb within Ibwera Village in Ibwela Ward Bukoba Rural. The Prescribed Application Form of the Tribunal which initiated the proceeding in the Tribunal was silent with regard to land size and precise location. Before the suit was called for hearing, two (2) summons were issued to the Respondents by the Order of the Tribunal on 24th October 2012, but no proof was registered in Tribunal. On 28th May 2013, the Prescribed Application Form, was ordered to be amended by the Tribunal without any prayer from the Applicant. On 13th June 2013, the Applicant in the Tribunal was recorded to have said that the Respondent cannot be seen. On 1st August 2013, the Applicant in the Tribunal admitted that she could not obtain proof of service from the court process server.

On this date, 1st August 2013, the Tribunal ordered mention on 20th September 2013 and the Applicant in the Tribunal was required to tender proof of service on 20th September 2013. Proceedings of 20th September 2013 are silent on what transpired with service to the Respondents. However, on 1st November 2013, the Tribunal *suo*

moto ordered the Application to proceed *Ex-Parte* hearing on 10th February 2014. The *Ex-parte* hearing did not take place for various reasons until on 17th September 2014. Perusing the proceedings of this day in the Tribunal, there seems there were five (5) farmlands all located at Mbatama in Ibwera Village, which the Applicant in the Tribunal was claiming and one was registered in **Application No. 238 of 2012** in the Tribunal.

It was unfortunate that the Applicant in the Tribunal did not register evidence during the hearing to display the disputed land specifications and size. After hearing of the Application on 24th November 2014, the Tribunal ordered for *Ex-Parte Judgment* on 21st January 2015. On this date, the Ex-Parte Judgment was not delivered and it was set for delivery on 23rd April 2015. On this date again, it was scheduled to be delivered on 2nd June 2015. On this date, 2nd June 2015, the Ex-Parte Judgment was read in absence of the Respondents, and no proof of summons to the Respondents were recorded in the Tribunal.

It is unfortunate that proceedings in the Tribunal are silent from 2nd June 2015 to 30th September 2016 where the present Applicant is recorded to object the Execution. However, on 13th January 2017

the present Applicant is recorded to have registered an application to set aside the *Ex-Parte Judgment* which was dismissed on 13th November 2017 for non-appearance. From this date, 13th November 2017 to 25th February 2020, the record is coupled with uncertainties and unclear proceedings which are difficult to grasp the contents and what was actually taking place in the Tribunal.

My perusal in the record of this Application reveals two (2) faults, *viz*: denial of the right to be heard and silence in precise location & size of the disputed land. It is fortunate that all issues have already been determined by this court and Court of Appeal hence this court will not be detained in determining the Application. I shall just state the position of the law.

The guidance from our superior court of the land is that litigants must be given the opportunity to exercise their right to be heard, especially where there are glaring irregularities (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 any case, denial of the right to be heard does not only breach article 13 (6) (a) on the right to fair hearing, but also bars substantive justice under article 107A (1) (e) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and enactment in section 3A of the **Civil Procedure Act** [Cap. 33 R.E. 2019].

On the other hand applicants who fail to state precise size, location and surrounding boundaries or neighbours violate the 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).

With all these defects and violation of the laws in the cited pieces of legislation and precedents, the Tribunal proceeded and decided the matter in favour of the Applicant (the Respondent) and ordered that:

The respondents, their agents and any other person are ordered to give vacant possession as well as permanent restrained from entering upon the suit land.

The reasoning of the Tribunal as is depicted at page 4 of the *Ex-Parte Judgment* is quietly appalling. The learned Chairman reasoned that:

*One would ask himself why the two respondents have deliberately failed to file the defence? Quickly, the answer would be lack of evidence or ignorance of the law. **Since the applicant's claims have not disputed by the Respondents, I am on the view that the said applicant has right over the suit land.***



(Emphasis supplied)

This reasoning of the Tribunal is one of the reasons justifying ownership in land that cannot be allowed to remain in record of the Tribunal. Basing a decision on no-appearance of the Respondents instead of *Ex-parte Proof* by the Applicant in the Tribunal. The advices from our superior court in situations like the present one is to set aside the proceedings and quash judgment emanated from the proceedings because superior courts have the additional duty of ensuring proper application of the laws by the courts or tribunals below (see: **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).



Considering the advices descending from our superior court, noting of the stated errors in this Application and regarding the interest of justice, I have formed an opinion to set aside proceedings and quash decisions of the Tribunal as I hereby do in all three (3) Applications viz: **Application No. 239 of 2012, Application for Execution No. 239A of 2012 & Application for Execution No. 238 of 2016**. I order no costs in this Application. Each party shall bear its own costs. The reason is straight forward. The irregularities were not caused by the parties. It was the Tribunal sitting at Bukoba hearing and determining the Applications without abiding by the law

both in statutes and precedents. If any of the parties still wish to contest on the land. May opt for fresh and proper suit before competent forum in accordance to laws regulating land disputes.

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. Ramadhan Hussein and in presence of the Respondent, Ms. Imelda Abdallah.



F.H. Mtulya
Judge
11.03.2021