

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL No. 72 OF 2018

*(Arising from the District Land and Housing Tribunal for Kagera in
Application No.51 of 2009)*

SEBASTIAN FELIX ----- APPELLANT

Versus

- 1. KAMACHUMU MUUNGANO
REGISTERED BOARD OF TRUSTEES**
- 2. SIXBERT RWABUSHOZI &**
- 3. JACKEM AUCTION MART
BROKERS LTD**

----- RESPONDENTS

JUDGMENT

30.06.2021 & 30.06.2021
Mtulya, J.:

On the 5th November 2018, a judgment was rendered down by the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Application No. 51 of 2009** (the Application), and ordered a sale of Mr. Sebastian Felix's (the Appellant) land located at Rutege Village within Ibuga Ward in Kamachumu area of Muleba District, Kagera Region.

The judgment irritated the Appellant hence approached learned counsel, Mr. Aaron Kabunga to draft an appeal to protest the decision

in the Application. Mr. Kabunga after going through the proceedings of the Tribunal, noted four (4) defects and changed them into four (4) grounds of appeal. The first ground of appeal was drafted in the following text:

That the trial Tribunal Chairman erred grossly in law for failure to enter default judgment against the first Respondent who never filed Written Statement of Defence to contest the suit, and it was unpocedural for the Tribunal to allow her defence to be entered into the record in absence of any Written Statement of Defence as required by the law.

This complaint was scheduled for hearing in Civil Session Cases today morning in this court. It was fortunate that both parties invited senior counsels of this jurisdiction of Kagera Chapter. The Appellant invited the drafter of the Memorandum of Appeal, Mr. Kabunga whereas the Respondents preferred the legal services of learned senior counsel, Mr. Josephat S. Rweyemamu.

Being aware of section 66 of the **Advocates Act** [Cap. 341 R.E 2019] the dual learned senior counsels had short discussions and consultations and at the conclusion of their consultations, Mr. Rweyemamu conceded that the proceedings of the Tribunal in the

Application are silent on receipt of Amended Written Statement of Defence of the First Respondent registered on 17th April 2014 in the Tribunal. Following the detection of the defect, Mr. Rweyemamu stated that the proceedings in the Application were at fault from the hearing of the defence case.

On remedies available in such circumstances, Mr. Rweyemamu opined that *trial de novo* will be appropriate step in searching for fair proceedings in the Tribunal. Finally, Mr. Rweyemamu submitted further that the fault in the proceedings was caused by all the parties and blessed by the Tribunal hence costs may be ordered in due course as the dispute has not been determined to the finality. This submission was received well by Mr. Kabunga save for costs. To Mr. Kabunga's opinion, the fault was caused by the Respondents themselves as they did not enter a prayer to register their Written Statement of Defence in the Application hence they must be responsible for the omission.

On my part, I think, this is one of the fortunate cases where learned counsels are in agreements that the appeal before the court has merit and may be allowed in search of proper proceedings in the Tribunal. I have perused the record of the appeal and found out that the Application commenced in the Tribunal on 31st March 2009 and

ended on 5th November 2018, when the judgment was delivered. The record shows further that the Appellant had filed the Application on 31st March 2009 against three Respondents, including SWISS AID KAMACHUMU.

However, during the proceedings it was learnt that there was no such a party as SWISS AID KAMACHUMU rather KAMACHUMU MUUNGANO REGISTERED BOARD OF TRUSTEES hence on 17th April 2014 an Amended Written Statement of Defence was initiated and registered in the Application by the Respondent's counsel in favor of proper record, but the route is not reflected anywhere on record.

It is from this silence on record where Mr. Kabunga drafted ground number one of this appeal and today after consultations, the dual learned counsels agreed to pray for nullification of the proceedings in the Tribunal from where the defence registered its evidences. However, the dual counsels differed on costs of this appeal.

To my opinion, I think, this appeal holds merit and must be allowed in favor of fair proceedings in the Tribunal. This court has additional duty in ensuring proper application of laws by the tribunals below (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). I have therefore formed an

opinion to nullify proceedings of the Tribunal in Application No. 51 of 2009 from where the defence entered their evidences. I therefore order *trial de novo* from where the Applicant closed its case. For costs, I order costs in due course. Reasons are straight forward. The dispute has not been determined to the finality, and the wrongs were partly attributed by the Tribunal itself and in any case, officers of the court in the Application did not assist the Tribunal to have fair proceedings in the Application.

It is so ordered.

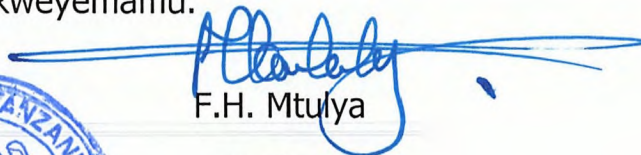


F.H. Mtulya

Judge

30.06.2021

This judgment was delivered in chambers under the seal of this court in presence of the Appellant, Mr. Sebastian Felix and his learned counsel Mr. Aaron Kabunga and in the presence of the Respondents, viz. Mr. Leodgard Muchunguzi, Board Secretary for the First Respondent, and Mr. Sixbert Rwabushozi and their learned counsel Mr. Josephat S. Rweyemamu.



F.H. Mtulya

Judge

30.06.2021