

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

Misc. LAND CASE APPEAL No. 29 OF 2020

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba
in Land Appeal No. 72 of 2019 and original from Kashai Ward Tribunal in
Civil Case No. 111 of 2018)*

EDGAR MUGISHA AUGUSTINE ----- APPELLANT

Versus

DOMINA PROJESTUS ----- RESPONDENT

JUDGMENT

29.06.2021 & 29.06.2021

Mtulya, J.:

Mr. Edgar Mugisha Augustine (the Appellant) was prosecuted by Ms. Domina Projestus (the Respondent) in **Civil Case No. 111 of 2018** (the case) before **Kashai Ward Tribunal** (the Ward Tribunal) for entering and extending land boundaries in Kashai area within Bukoba Municipality of Kagera Region. After full hearing of the case, the Ward Tribunal decided in favor of the Respondent.

The Appellant was dissatisfied with the decision hence preferred **Land Appeal No. 72 of 2019** (the appeal) before the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal). The Tribunal heard the appeal and finally dismissed it with costs for lack

of merit. The Appellant was not satisfied hence preferred **Miscellaneous Land Case Appeal No. 29 of 2020** attached with two (2) grounds of appeal.

Today afternoon when the appeal was scheduled for hearing this court *suo moto* noted and raised an issue of land description as both the proceedings and decision of the Ward Tribunal are silent on land size and location. As part of cherishing the right to be heard provided under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, this court invited the parties to exercise the right by stating the legal position in such situation.

In order to fully appreciate the issue, the Appellant had decided to invite the legal services of Mr. Victor Blasio, learned counsel, to argue the appeal. Mr. Blasio briefly stated that the issue of land size and location is important and was not stated by the parties in the Tribunal which may render the appeal meaningless. Mr. Blasio argued further that the decision in the Ward Tribunal stated on boundaries erected by Kashai Ward Executive Officer. However, the decision is silent on the size established by the officer.

The Respondent on his part briefly submitted that she bought the land from owner without certainty of size as she was shown traditional boundaries only and therefore cannot state with certainty the extent of interference of the boundaries by the Appellant.

Following the submissions of the parties, this court noted that the parties are in agreement that description of the land in dispute was not stated during the proceedings in the Ward Tribunal in Kashai. The law and practice of this court has been that any land in dispute must state land description with certainty so that it can be distinguished from other lands (see: Regulation 3 (2) (b) of the **Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003**, GN. No. 174 of 2003 and precedent in **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018 (Bukoba District Registry)).

Having said so and considering the description of the disputed land is lacking in the present appeal and noting existence of the law in the Regulations and precedent, I have formed an opinion to quash the decisions and set aside proceedings and any orders emanated in **Land Appeal No. 72 of 2019** decided by the Tribunal and **Civil Case No. 111 of 2018** determined by the Ward Tribunal. Any interested party may initiate proceedings in the competent tribunal empowered

to try the matter in according to the laws regulating land issues. I award no costs in this appeal. Each party shall bear its own costs. The fault in land certainty was caused by the parties and blessed by the tribunals below.

It is so ordered.



F.H. Mtulya

Judge

29.06.2021

This judgment was delivered in chambers under the seal of this court in the presence of the Appellant, Mr. Edgar Mugisha Augustine with his learned counsel Mr. Victor Blasio and in the presence of the Respondent, Ms. Domina Projestus.



F.H. Mtulya

Judge

29.06.2021