

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL No. 106 OF 2020

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 19 of 2013)

LUCIA BENEDICTO ----- APPELLANT

Versus

1. SALVATORY BENEDICTO

2. EUSTADI DAUDI

3. VENERANDA DAUDI



----- RESPONDENTS

JUDGMENT

28.06.2021 & 28/06/2021

Mtulya, J.:

The District Land and Housing Tribunal for Kagera at Bukoba (the Tribunal) in **Application No. 19 of 2013** (the Application) determined a land dispute and delivered judgment on 3rd June 2016. At page 2 of the judgment, the learned Chairman stated that: *I see no reason to go to the merit of the case, the matter is just res judicata. So the application is hereby dismissed.* This statement irritated Mr. Lucia Benedicto (the Appellant) hence rushed to this court and filed **Land Case Appeal No. 106 of 2020** attached with four (4) grounds of appeal to protest the judgment of the Application.

The appeal was called today afternoon in this court as part of Civil Session Cases hearing. However, before the parties were given the floor to substantiate for and against the judgment, this court *suo moto* raised an issue with regard to the record in **Civil Case No. 15 of 2012** determined to the finality by **Ijumbe Ward Tribunal**. This decision was the basis of the judgment of the Tribunal in the Application.

As the parties were lay persons, they have decided to invite legal services of learned counsels Mr. Dunstan Mutagahywa and Mr. Seth Niyikize to argue for and against the issue raised *suo moto* by this court. In cherishing the right to be heard enacted in our constitution under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002 and **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018, the dual counsels were given the floor to exercise the right.

It is fortunate that both parties admitted that the decisions in **Civil Case No. 15 of 2012** decided by **Ijumbe Ward Tribunal** was not registered in the Tribunal to be part of the proceedings hence the Tribunal lacked jurisdiction to hold the Application as *res judicata*.

With the consequences of the fault, the two (2) learned counsels differed in opinions. According to Mr. Mutagahywa this court is mandated to re-evaluate the evidences and declare the rightful owner of the land, whereas Mr. Niyikize thought that the Tribunal was supposed to call for the record of Ijumbi Ward Tribunal and failure to which it must be given an opportunity to re-determine the dispute.

On my side, I think there is mention of **Civil Case No. 15 of 2012** determined by **Ijumbi Ward Tribunal** at page 26 of the proceedings in the Tribunal, but the decision was not invited by the Tribunal to assess the ingredients of *res judicata* by comparing the two decisions. Therefore, the ingredients of the principle of *res judicata* were not evaluated as per requirement of the law enacted in section 9 of the **Civil Procedure Code** [Cap. 33 R.E 2019] as interpreted by the Court of Appeal in the precedent of **Shengena Ltd v. National Insurance Corporation and Another**, Civil Appeal No. 9 of 2008.

Since the parties are in agreement that **Civil Case No. 15 of 2012** determined by **Ijumbi Ward Tribunal** was not registered in the Tribunal, and that the effect of the decision of the Application in the Tribunal, and considering this court has additional duty of ensuring proper application of the law, it cannot close its eyes in such vivid

violation of the cited law and precedent. In conclusion, I have decided to allow the appeal, quash the judgment and set aside proceedings and orders emanated in **Application No. 19 of 2013** before the **District Land and Housing Tribunal for Kagera at Bukoba.**

It is so ordered.





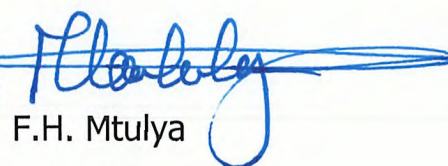
F.H. Mtulya

Judge

28.06.2021

This judgment was delivered in chambers under the seal of this court in presence of the Second and Third Respondents, Mr. Eustadi Daudi & Veneranda Daudi and their learned counsel Mr. Seth Niyikiza and in the presence of the Appellant's learned counsel, Mr. Dunstan Mutagahywa.





F.H. Mtulya

Judge

28.06.2021