

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

Misc. LAND CASE APPEAL No. 39 OF 2020

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in
Land Application No. 67 of 2019 & Original from Buhembe Ward Tribunal in
Civil Case No. 9 of 2019)*

PRISCA SIMON ----- APPELLANT

Versus

LONGINO IYOLORIMO ----- RESPONDENT

JUDGMENT

08.07.2021 & 08.07.2021

Mtulya, J.:

On 16th September 2020, Prisca Simon (the Appellant) approached learned counsel Mr. Ally Chamani, learned counsel, to draw Petition of Appeal to protest the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Appeal No. 67 of 2019** (the Land Appeal). Mr. Chamani for his client drafted a total of six (6) grounds of the Appeal in the petition and approached this court on 25th September 2020 to register **Land Case Appeal No. 39 of 2020** (the Appeal).

When the appeal was scheduled for hearing on 8th July 2021, both parties preferred learned counsels to argue the Appeal. The

Appellant invited the drafter of the Appeal whereas Mr. Longino Iyolorimo (the Respondent) marshalled learned counsel Mr. Joseph Bitakwate. After lengthy submissions, discussions and consultations, the dual learned counsels came into an agreement that the descriptions of the land in dispute is not stated in the record. In appreciation of the fault, the dual counsels cited the decision of this court in **Audax M. Tibanyendela v. Hamza Sued & Ten Others**, Land Case Revision No. 13 of 2019 where this court stated that: land dispute concerns ownership of certain piece of land distinguished with other land in terms of size and location.

The dual learned counsels also entered into an agreement that the fault renders the proceedings and judgment a nullity. However, the dual counsels exchanged horns on which proceedings to be declared a nullity in this court. According to Mr. Chamani, it is the decision of the Tribunal in the Land Appeal whereas Mr. Bitakwate thought it was proceedings of both Tribunals below, as the decision of the Tribunal emanated from **Buhembe Ward Tribunal** (the Ward Tribunal) in **Civil Case No. 9 of 2019** (the case).

On my part, I perused and scanned the record of this appeal. The record shows that there are unnumbered pages of the proceedings and decision of the Ward Tribunal displayed from 21st

August 2019 to 28th August 2019 with no certainty on land in dispute from the evidences of both parties and their witnesses. It is fortunate that the dual learned counsels concurred that the record is silent on detailed descriptions of the land and cited the authority of this court in **Audax M. Tibanyendela v. Hamza Sued & Ten Others** (supra) and upon perusing the precedent, I found two issues at page 9 of the decision, viz: first, the statement on land description and citation of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) on the need of land specifications; and second, citation of the authority in **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017, on the powers of superior courts to ensure proper application of the laws by the courts below.

With regard to the remedies available in situations like in the present appeal, page 10 of the precedent in **Audax M. Tibanyendela v. Hamza Sued & Ten Others** (supra), it was stated that: *where there is obvious breach of the law in statute and precedents of our superior court, this court cannot hesitate to quash decisions of the lower courts or tribunals*. The remedy in this appeal was stated by this court without any qualification whatsoever.

In maintaining certainty and expectations of the parties and learned counsels, this court decides to abide with orders delivered in the precedent in **Audax M. Tibanyendela v. Hamza Sued & Ten Others** (supra). Having said so, I have formed an opinion to quash the decisions and set aside proceedings and any orders emanated from the two (2) tribunals below in the case and land case.

As the dual learned counsels cooperated and assisted this court in arriving justice, and noting the dispute has not been settled to the finality, I have decided to award no costs. Each party shall bear its own costs. If any of the parties is still interested in the dispute, he is at liberty to file fresh and proper suit in an appropriate machinery in accordance to the law regulating land matters.

It is so ordered.



F.H. Mtulya

Judge

08.07.2021

This judgment was delivered in chambers under the seal of this court in the presence of the Appellant, Mrs. Prisca Simon and her learned counsel Mr. Ally Chamani and in the presence of the Respondent, Mr. Longino Iyolorimo and his learned counsel Mr. Joseph Bitakwate




F.H. Mtulya
Judge
08.07.2021