IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

LAND CASE APPEAL No. 71 OF 2019

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 105 of 2013)

ELIAS KASHAGAMA ---------- APPELLANT

Versus

THEOBARD BONEPHACE TIBIHIKAHO ---------- RESPONDENT

JUDGMENT

06.07.2021 & 06.07.2021

Mtulya, J.:

Mr. Elias Kashagama (the Respondent) filed the present appeal in protest of the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Application No. 105 of 2013** (the Application). In the Application, Mr. Theobald Boniphace Tibahikaho (the Respondent) described the land in dispute as located at Rwambale, Kayanga in Karagwe and the Appellant disputed the location in second paragraph of his Written Statement of Defence.

During proceedings conducted on 3rd December 2013, the parties framed two (2) issues briefly that: first, *who is the rightful owner of the suit land;* and second, *and what reliefs to the parties.* During the hearing of the Application on 4th April 2016, as depicted at page 21 of

the proceedings, the Applicant described the land as located at Kishamuko Rwambale, Kayanga in Karagwe whereas the Respondent when testifying on 28th January 2019 as depicted at page 53 of the proceedings he stated that the land is located at Kairaza Rwambale in Kayanga, Karagwe District.

The record of this appeal is also silent on the search of the certainty of the land and visitation of *locus in quo* to have detailed descriptions of the land in dispute. The practice has been that it is difficult to determine an appeal with the record on uncertainties of location, size and neighbors surrounding the land (see: **Daniel D. Kaluga v. Mashaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **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). The precedents were interpreting 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 this dispute will follow the same course.

Noting of the defect, this court *suo moto* invited learned counsels of the parties, Mr. Lameck Erasto John for the Appellant and Joseph Bitakwate for the Respondent to scan the proceedings and state on the

status of the judgment and proceedings. The learned counsels were invited to exercise the right to be heard as enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018 and **Mbeya-Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002.

It was fortunate that after scanning the record and short conversations between the dual counsels, they both admitted that there is fault in the record of the Tribunal. However, they disagreed on the status of the judgment and proceedings in the circumstances like the present one. According to Mr. Lameck, the proceedings must be nullified whereas Mr. Bitakwate thought that nullification should start at the end of the conclusion of the defence case but before judgment as the proceedings were correct up to the completion defence case gave for *locus in quo* which is quarreled in this appeal.

On my side, the matter will not detain me. I raised and said it *suo moto,* that the Application itself has faults, Written Statement of Defence has faults and the proceedings are at faults as they are silent on land in dispute and visitation of the scene of the dispute. I understand there is a bundle of precedents on the subject which shows the remedies in such circumstances and need not to take time

in explaining the subject (see: **Daniel D. Kaluga v. Mashaka Ibeho & Four Others** (supra); **Ponsian Kadagu v. Muganyizi Samwel,** (supra); and **Simeo Rushuku Kabale v. Athonia Simeo Kabale** (supra).

In any case, the law in Regulation 3 (2) (b) of Regulations requires detailed descriptions of the land in terms of size, location and neighbors surrounding the land so that it can be distinguish from other lands. This dispute in the Application did not provide land specification land did not comply with the law. I understand there was a dispute on assessor's participation and retirement and invitation of section 23 and 24 of Cap. 216. The dispute has already been handled by our superior court, the Court of Appeal, that the unclear proceedings on involvement and conduct of the assessors must be nullified (see: **Ameir Mbarak & Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015 and **Joseph Kabuhi v. Reginam** [1954] EACA Vol. XX 1-2).

Having said so, and considering the Application had fault for want of land specifications as required by the cited Regulation and precedents delivered by this court, I have formed an opinion to quash the judgment, set aside the proceedings and any orders emanated in the Application. If any of the parties who is still interested in the

dispute may prefer fresh and proper suit in accordance to the laws regulating land disputes. I award no costs as the matter was raised *suo moto*, learned counsels acted as officers of the court and the Tribunal contributed to the faults. In any case the matter has not been determined to the finality to identify who is right in the dispute.

It is so ordered.

F.H. Mtulya

Judge

06.07.2021

This judgment was delivered under the seal of this court in chambers in the presence of the Appellant, Mr. Elias Kashagama and his learned counsel Mr. Lameck Erasto John and in the presence of the Respondent, Mr. Theobald Bonephace Tibahikaho and his learned counsel, Mr. Joseph Bitakwate.

F.H. Mtulya

Judge

06.07.2021