

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF BUKOBA)**


**AT BUKOBA**

**LAND CASE APPEAL No. 105 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in the  
Application No. 111 of 2011)*

**JOSEPHAT GALEBA ----- APPELLANT**

**Versus**

<b>1. THE RIGHT BISHOP DR BENSON BAGONZA</b>		<b>RESPONDENTS</b>
<b>2. THE SECRETARY GENERAL ERASTO KAMIHANDA</b>		
<b>3. TREASURER GEORGE NDIBALEMA</b>		
<b>4. THE REGISTERED TRUSTEES OF EVANGELICAL LUTHERAN CHURCH OF KARAGWE</b>		

**JUDGMENT**

06.07.2021 & 06.07.2021

Mtulya, J.:

**Land Case Appeal No. 105 of 2020** (the Appeal) was filed in this court on 1<sup>st</sup> December 2020 by Mr. Josephat Galeba (the Appellant) to dispute the decision of the **District Land and Housing Tribunal for Kagera at Bukoba** (the Tribunal) in **Land Application No. 111 of 2011** (the Application). The Appellant had attached five (5) grounds of appeal and today when the appeal was scheduled for

hearing in Civil Session Cases, both parties invited legal services of learned counsels, Mr. Zeddy Ally for the Appellant and Mr. Mathias Rweyemamu for the Respondents. When Mr. Mathias was given the floor of this Chambers to open up the proceedings, he rapidly admitted the Appeal contending that the Honorable Chairman of the Tribunal committed an error in breach of section 23 (2) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019] (the Act) read together with Regulation 19 (2) of the **Land Disputes Court (District Land and Housing Tribunal) Regulations of 2003, GN. No. 74 of 2003** (the Regulations) as he did not involve Honorable Assessors in arriving its decision.

To substantiate his claim, Mr. Mathias cited page 3 of the decision which shows that the chairman concurred with one of the assessors but he was silent with the second assessor who sat with him in the suit. According to Mr. Mathias, the Tribunal was not properly constituted as per requirement of the law in section 23 of the Act and prayed the whole proceedings be set aside and judgment and decree be nullified and each party to bear its own costs.

This prayer emanated from the submission of Mr. Mathias was received well with Appellant's learned counsel, Mr. Zeddy Ally, who briefly prayed the proceeding be quashed without costs. I have perused and scanned the judgment and proceedings in the Application. In the judgment, at page 3, the learned Chairman stated that: *as per facts and my one assessor opinion, who opined in favor of the Applicant and with which I concur, the application is hereby allowed.* The proceedings at page 48 conducted on 17.03.2016, the Tribunal was well composed of Chairman, Mr. R.E. Assey and two assessors, Ms. Nyakato and Mr. Bwahama.

However, during the composition of the judgment, the Chairman consulted only one (1) of the assessors and did not consult or gave reasons for failure to consult the second. This is violation of Regulation 19 (2) of the Regulations, section 23 (2) of the Act and precedents in **Elia Alphonse v. Idrisa Salimu**, Misc. Land Case Appeal No. 36 of 2012; **Awiniel Mtui & Three Others v. Stanley Ephata Kimambo** (Attorney for Ephata Mathayo Kimambo), Civil Appeal No.97 of 2015; and **Ameir Mbarak & Another v. Edgar Kahwili**, Civil Appeal No. 154 of 2015).

In search of fair proceedings, I have decided to nullify the proceedings and set aside judgment, decree and any orders emanated from the Application. I award no costs in this appeal as the learned counsels Mr. Mathias and Mr. Zeddy acted as officers of the court, and in any case, the dispute has not been determined to the finality. Any party who is still interested in the dispute may prefer fresh and proper suit to be filed in competent tribunal in accordance to the laws regulating land disputes.

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 learned counsel Mr. Mathias Rweyemamu for the Respondents and Mr. Zeddy Ally learned counsel for the Appellant.



  
F.H. Mtulya

**Judge**

06.07.2021