

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL No. 24 OF 2019

(Arising from the application No. 75/2017 of the Land and Housing tribunal for Kagera at Karagwe)

ELIZEUS JEREMIAH.....APPLICANT

VERSUS

MERICHADES DOMICIAN.....1ST RESPONDENT

JACKSON DOMINICK.....2ND RESPONDENT

JUDGMENT

20th & 20th July 2021

Kilekamajenga, J.

The appellant, Elizeus Jeremiah, through the legal services of the learned advocate (Mr. Lameck John Erasto), approached this Court challenging the decision of the District Land and Housing Tribunal for Kagera at Karagwe. The petition of appeal contained three grounds of appeal coached thus:

- 1. That, in delivering the judgment the learned chairman grossly erred in law and misdirected himself by concurring with the opinion of a single Assessor who had misconceived the adduced evidence in toto (sic).*
- 2. That, the trial chairman has finally delivered the judgment with the reason (sic) of the documents tendered by the prosecution side without considering the defence testimonies which established the lawful ownership of the suitland by the Appellant.*
- 3. That, the decision made by the trial tribunal was made contrary to the weight of the produced evidence.*

When the matter was ready for hearing, the two counsels appeared to address the Court on the appeal. The learned counsel, Mr. Lameck John Erasto appeared

for the appellant while the learned advocate, Mr. Byamungu appeared for the respondent. Before the hearing, Mr. Lameck invited the court to consider the blatant errors on the records of the proceedings of the trial tribunal. **First**, he argued that assessors were not involved in the hearing on the case and there are no reasons given on their absence. **Second**, the counsel submitted that at page 10 of the typed proceedings of the trial tribunal, there was an extra – ordinary exchange of tribunal chairmen just on the same day. There are no reasons given why two chairmen heard one witness on the same day. Mr. Lameck further informed the Court that the only remedy to the noted errors is to nullify the proceedings and allow a party with interest in the case to file a fresh case. Mr. Lameck rested his case and allowed the counsel for the respondent to take the floor.

On the other, Mr. Byamungu for the respondent conceded to the obvious flaws appearing on the proceedings of the trial tribunal. He was also in support of the position of law that would nullify the proceedings and allow an interested person to file a fresh case before a competent forum.

In deciding this appeal, I do not see the need to waste the previous time of this Honourable Court of justice analysing the brazen flaws noted on the proceedings of the trial tribunal. It is evident that the proceedings do not clearly show whether the case was heard with the chairman and assessors. At some point

their names appear but their presence does not feature. They never asked questions for clarification at any point. At the end of the proceedings, it seems the chairman considered the opinion of one assessor. However, there are no reasons given where and when the other assessor was dropped.

Also, the proceedings show that one witness called Jackson Dominick Laurian was heard by R. E Assey (chairman) during examination in chief but the same witness was heard by J. K. Banturaki (chairman) during cross – examination. There are no reasons given why such an extra-ordinary exchange of tribunal chairmen happened on the date of 16/08/2018. In conclusion, this case was marred with fatal irregularities which go into the root of the case. It is as good as the case was heard without assessors something which is contrary to the law and the only remedy to the above flaws is to nullify the proceedings. I hereby allow the appeal and quash the proceedings of the trial tribunal and the decision thereof. The parties are hereby restored to their original position and any party with interest in this case may file a fresh case. No order as to costs. It is so ordered.

Dated at Bukoba this 20th July 2021.




Ntemi N. Kilekamajenga
Judge
20th July 2021

Court:

Judgment delivered this 20th July 2018 in the presence of the counsel for the respondents, Mr. Byamungu (advocate). Right of appeal explained to the parties.




Ntemi N. Kilekamajenga
Judge
20th July 2021