

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

MISC. LAND CASE APPEAL NO. 17 OF 2019

(Arising from revision No. 8 of 2015 of the District Land and Housing Tribunal of Bukoba and originating from Kalororo Ward Tribunal in civil case No. 11 of 2015)

JAMES BONIPHACE.....APPELLANT

VERSUS

WARDA ANOLD KISIGARA.....1ST RESPONDENT
DOLISI ELIZUWANI HELMAN.....2ND RESPONDENT

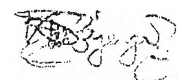
JUDGMENT

10th August & 10th September 2021

Kilekamajenga, J.

The appellant, through the legal services of the learned advocate, Mr. JS Rweyemamu lodged the instant appeal challenging the decision of the District Land and Housing Tribunal of Bukoba in the application for revision number 8 of 2015. The appellant moved this Court with three grounds of appeal thus:

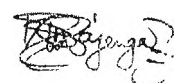
- 1. That the chairman of the District Land and Housing Tribunal strongly erred in law for failure to intervene in the irregular process of entertaining the matter which is res judicata during the proceedings in the Ward Tribunal of Kahororo and persisted on a misconception that the applicant had room to appeal against the judgment which was not yet decided on. The applicant filed the revision on 08th May 2015 two months before, during the pendency of case in the Ward Tribunal which was later decided on 24th day of July 2015.*



- 2. The District Land and Housing Tribunal vehemently misdirected itself for failure to analyse the position of the previous decision on the same matter which was decided in favour of the appellant wherein the execution on that regard had already been successfully done.*
- 3. The District Land and Housing Tribunal decided the application for revision against all the existing favourable circumstances for the appellant.*

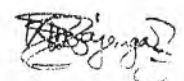
The parties finally appeared before this Court to argue the appeal. The counsel for the appellant prayed to dispose of the appeal by way of written submissions something which was not objected by the counsel for the respondent, Mr. Zeddy Ally. The counsel for the appellant submitted that, this matter started with Land Case No. 9 of 2009 between Adventina Majaliwa v. James Boniface. In that case, the appellant was awarded the disputed land. The judgment was delivered on 20th August 2010. The appellant applied for execution in the District Land and Housing Tribunal vide Misc. Application No. 137 of 2011. The application was granted on 09th January 2012 and execution was carried out by the court broker called Jackem Auction Mart and Broker LTD. Thereafter, the appellant continued to possess the land from 22nd June 2013. In 2015, James Boniface disposed of the disputed land to Warda Masoud by way of sale. The sale agreement was signed on 25th April 2015.

On 17th April 2015, Doris Herman filed a land case No. 11 of 2015 against the appellant and Warda Masoud at Kahororo Ward Tribunal. Thereafter, the



appellant filed an application for revision at the District Land and Housing Tribunal that ordered the execution. However, the District Land and Housing Tribunal decided the application for revision without the records from the Ward Tribunal. On the other hand, the Ward Tribunal of Kahororo delivered its decision on 24th July 2015 while the decision of the District Land and Housing Tribunal, on the application for revision, was delivered on 20th September 2017. It was therefore wrong to decide the application for revision without the records of the Ward Tribunal. The counsel further submitted that the land in dispute in Land Case No. 09 of 2009 was the same in the case of Doris Herman i.e. in Land Case No. 11 of 2015.

In response, the counsel for the respondent impugned the appellant's written submission for lacking the ingredient of being termed a written submission but a brief presentation of the case as per the order of the court. Also, the written submission does not show the date when it was presented for filing and therefore the order of the Court was not complied. Based on the above reasons, he urged the Court to dismiss the appeal. He supported his argument with the cases of **Athumani Kungubaya and Another v. PSRC & TTCL, Misc. Civil Appeal No. 09 of 2001** (unreported) and **Monica Dickson v. Hussein J. Wasuha (KNY Chama cha Wafanyabiashara), PC Civil Appeal No. 04 of 2019**, HC at Mbeya (unreported).



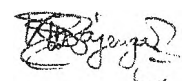
Mr. Ally further argued that the District Land and Housing Tribunal was right to dismiss the revision No. 8 of 2015 because the appellant failed to exercise the right of appeal against the decision of the Ward Tribunal. After the decision of the Ward Tribunal, the appellant filed an appeal No. 142 of 2015 on 08th September 2015. The appeal was resisted with a point of preliminary objection and the same was struck out for being filed out of time. At this time, the revision No. 08 of 2015 was pending before the District Land and Housing Tribunal. The appellant was therefore pushing two cases at the same time *viz.* the revision and appeal. However, the two cases ended up being dismissed. Mr. Ally prayed for the appeal to be dismissed.

When rejoining, the counsel for the appellant argued that there is no format, style nor standards of written submissions. He also distinguished the submitted cases with the instant appeal. He further insisted that the records of the Ward Tribunal were not submitted to the District Land and Housing Tribunal before the impugned decision was made.

Having considered the submission from the parties, the most obvious issue for determination is whether the appeal before this Court has any merit. What I have garnered from the submission is that, the decision of the Ward Tribunal in Land Case No. 09 of 2009 between Adventina Majaliwa versus the appellant

ended way back before the 2nd respondent filed another case against the appellant and Warda in 2015. According to the Mr. Rweyemamu's submission, when this case was filed at the Ward Tribunal of Kahororo, the appellant filed application No. 8 of 2015 before the District Land and Housing Tribunal. The appellant believed that the land in dispute in 2009 was the same land subject of determination in the new case in 2015. In my view, it was wrong for the appellant to work on assumption that the land claimed in 2015 was the same land determined in 2009. Even so, the appellant had no reason to file the revision application before the District Land and Housing Tribunal before the Ward Tribunal made its decision. After the decision of the Ward Tribunal, the appellant could file an appeal instead of lodging the revision.

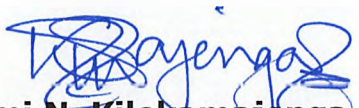
Again, the other version of the story which was not controverted by the counsel for the appellant is that, the Ward Tribunal made its decision in 2015 and the appellant preferred an appeal vide Appeal No. 142 of 2015. The appeal was objected and finally 'struck out' for being filed out of time. When the appeal was struck out, the revision No. 08 of 2015 was still pending before the District Land and Housing Tribunal. In my view, the appellant had already exhausted the right of appeal albeit without following the procedures for seeking extension of time. For that reason therefore, the District Land and Housing Tribunal had no reason to entertain the application for revision whose main case was already struck out.



I fairly join hands with the counsel with the submission of the counsel for the 2nd respondent that the appellant was abusing the court processes. In the upshot, I real find no merit in the instant appeal. In fact, it is just another kind of abuse of court processes and trying to confuse the parties and hinder the rightful parties from enjoying his/her rights. I hereby dismiss the appeal with costs. It is so ordered.

DATED at BUKOBA this 10th day of September, 2021.




Ntemi N. Kilekamajenga.
JUDGE
10/09/2021

Court:

Judgment delivered this 10th September in the presence of the 2nd respondent and her counsel, Miss Gisera Maruka and Miss Gisera Rugemarila for the appellant. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
10/09/2021

