

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

**AT BUKOBA**

**LAND APPEAL NO. 121 OF 2020**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 18 of 2018)*

**JOHANSEN RUTABINGWA.....1<sup>ST</sup> APPELLANT**

**AUGUSTINE NDYAMUKAMA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**FELIX HERMAN RUTABINGWA.....RESPONDENT**

**(The Administrator of the estate of the late  
HERMAN KABOBE KEMPANJU)**

**JUDGMENT**

*Date of Judgment: 30.09.2021*

*Mwenda, J.*

Mr. Johansen Rutabingwa and Augustine Ndyamukama (Appellants) being dissatisfied with the Judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 18 of 2018 preferred this appeal with a total of three (3) grounds.

When this appeal was scheduled for hearing both parties invited legal services of learned counsels, that is Mr. Lameck Erasto for the Appellants and Mr. Zeddy Ally for the Respondent.

In his submission in chief the learned counsel for the appellant submitted that, they have filed 3 grounds of appeal and he pray to argue the 3<sup>rd</sup> ground of appeal only as in his view it is sufficient ground to nullify the proceedings of District Land and Housing Tribunal. The said ground is that:

***"That the lower tribunal immensely committed a fatal error by omitting to address and incorporate the finds during the visiting the locus in quo leave alone the contravention of the established principle thereto".***

The learned counsel submitted that, at page 104 of the District Land and Housing Tribunal proceedings after the defence witness No.6 one Godlove Michael had given his testimony on 15.06.2020, the defence case was closed and the tribunal issued two orders that is, one defence case closed and two visit on 7<sup>th</sup> August 2020.

The learned counsel submitted that, they visited the Locus in quo but the proceedings are silent on records of visit. He went further by submitting that even

if they are assuming that the said order was vacated by the Tribunal, there is no records to that effect.

He also submitted that, at page 104 of the proceedings, on 31.08.2020 the court issued an order that a judgment would be on 12<sup>th</sup> October 2020. According to him from that date to the date of judgment there is no record indicating what transpired at the Locus in quo. He said it is not known if the order for visit was vacated.

To cement his argument learned counsel for appellant cited the case of **Sikuzani Said Magambo vs. Mohamed Roble Civil Appeal No. 197 of 2018 CAT** at page 2, 3<sup>rd</sup> paragraph and at page 7. Where the proceedings were nullified and it was ordered institution of fresh suit before another set of assessors and new chairman.

He also cited the case of **Elias Kashagama vs. Theobard Bonephace Tibinikaho Land Application No. 71 of 2019** (unreported) at page 1, 2<sup>nd</sup> paragraph where the records were silent on the records of visits to the Locus in quo.

The learned counsel for the appellant concluded by submitting that, to him this ground alone is sufficient to nullify the proceedings. So, he prayed for the

proceedings to be quashed and judgment set aside. He also prayed to be awarded costs.

In reply to the submission by the appellant, the learned counsel for the respondent Mr. Zedy Ally submitted that, he has heard the counsel's submission but he differs with him on the stance that the proceedings should be vitiated. He went further by submitting that, the learned counsel for the appellant is challenging the legality of District Land and Housing Tribunals proceedings and to him the argument that they visited the Locus in quo is not substantiated.

He went further by submitting that, the case cited by the learned counsel are distinguishable as in case of **Sikuzani Said Magambo (supra)** at page 2, the court visited the Locus in quo and the records are silent on whether there was a visit to the Locus in quo or not. To cement his argument, he cited that case of **Theopista Mnare vs. Tulanalwo Kasuku Land Application No. 07 of 2021** which is similar to the case cited by Mr. Lameck.

He went further by submitting that, in this case there is no problem that boundaries never existed and on failure of the District Land and Housing Tribunal to vacate to its order then this court may use revisionary powers to revert this matter to the District Land and Housing Tribunal so as to comply with its specious order. He also submitted that, the case of **Elias Kashangama (supra)** is also distinguishable as the order to visit Locus in quo was not issued and skipped.

He concluded by praying this appeal to be dismissed with costs.

In rejoinder the learned counsel for the appellant submitted that, where there are irregularities, courts are directed to take necessary orders and the precedents are very clear.

He also submitted that, the learned counsel for respondent is in agreement that there is irregularity in which the order to visit the Locus in quo is not known if it was vacated and failure to keep proper records on what happened after that order is a fatal irregularity which came to the detriment of appellants as it occasioned injustice.

The learned counsel for the appellant prayed that this court use revisional powers to nullify the proceedings and award them costs,

Having gone through the submissions by both parties and after a thoroughly perusal of the trial tribunal's records this court found that the issue for determination is whether the present appeal has merit.

It is from the submission by both parties that, on 15/06/2020 the District Land and Housing tribunal ordered for a visit of locus in quo on 07<sup>th</sup> August 2020. From that date the records are silence as to whether the tribunal conducted a visiting or not.

It is clear from the record that both learned counsels do not protest that there was

an order to visit the locus in quo but the records are silent as to whether the chairman vacated from that order or not.

There are a number of decided cases which provide guidelines to be followed when courts visit locus in quo. In the case of **Sikuzani Saidi Magambo & Another vs Mohamed Roble Civil Appeal No. 197 of 2018** Court of Appeal of Tanzania at Dodoma, citing the case of **Nizar M.H. vs Gulamali Fazal Janmohamed [1980] TLR 29** held inter alia that:

*"When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, the court should attend with the parties and their advocates, if any and with such witnesses as may have to testify in that particular matter..... when the court reassembles in the court room, all such notes should be read out to the parties and their advocates and comments, amendments, or objections called for and if necessary incorporated. Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand or relate to the evidence in court given by*

*witnesses. We trust that this procedure will be adopted by the courts in future". [emphasis added]*

In our case, the tribunal issuance of the order to visit locus in quo meant it was necessary to do so. Failure of the record to show what transpired during that visit and the records being silent as to whether that order was vacated is a procedural irregularity on the face of record which had vitiated the proceeding and occasioned miscarriage of justice to the parties.

That being said, this court find merits in this appeal and it is hereby allowed, the proceedings and judgement in Land Application No. 18 of 2018 before the District Land and Housing Tribunal are hereby quashed and set aside. Any interested party may institute a fresh suit before the new chairman with the new set of assessors.

Each party shall bear its own costs as the shortfalls discussed above were caused by the Tribunal.

It is so ordered.




  
A.Y. Mwenda

**Judge**

30.09.2021

Judgment delivered in chamber under the seal of this court in the presence of Ms. Erieth Barnabas for the appellant and Ms. Pilly Hussein for the respondent.



  
A.Y. Mwenda  
**Judge**  
30.09.2021