

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

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 23 OF 2020**

(C/F Application No. 64 of 2014, in the District Land and Housing Tribunal for Arusha at  
Arusha)

**ELIYAKESSIA N. SUMMARY.....APPELLANT**

**VERSUS**

**PINIEL LENUMBE SUMMARY.....1<sup>ST</sup> RESPONDENT**

**APAEI NDELILIO.....2<sup>ND</sup> RESPONDENT**

**RULING**

**22/10/2021 & 29/10/2021**

**GWAE, J**

In the District land and Housing Tribunal (DLHT), the appellant filed  
an application against the 1<sup>st</sup> respondent and the one Aranyael Nelilio Mbise,  
an administrator of the estate of the 2<sup>nd</sup> respondent. In the application the  
appellant claimed ownership of the disputed land measuring 33x22 located  
at Kikatiti Ward, Sakila Village-Arusha Region in which she alleged to have  
been given by her father in the year 1986.

The appellant further claimed that on the 29<sup>th</sup> the August 2010 the  
1<sup>st</sup> respondent invaded his land together with other persons and claimed

that, the suit land to be the property of the 2<sup>nd</sup> respondent on the allegations that the same was sold to him. The appellant thus prayed for the reliefs that she be declared the lawful owner of the Suitland, the sale be declared a nullity, the respondent, his agent and any other person acting under his instruction be permanently restrained from doing further development in the suit property and an order evicting the respondent from the Suitland.

After full hearing of the case the trial tribunal's findings were such that, the appellant had failed to prove her case on the balance of probability as her evidence was so contradictory and insufficient as to how she acquired the suit property. Consequently, the application was entirely dismissed with costs.

~~Dissatisfied with the decision of the trial tribunal, the appellant has~~  
filed this appeal with five (5) grounds namely;

1. That the trial tribunal erred in law and in fact when he failed to declare the sale agreement between the respondents herein was invalid from its conception as the result reached into an erroneous decision.
2. That the trial chairperson erred in law and in fact when failed to allow the appellant herein to brought witnesses before proceeding with the matter as the successor chairperson from her predecessor chairperson as the result she reached into a shoddy decision.

3. That the trial chairperson erred in law and in fact by failure to consider the decision of the Uongozi wa boma that declared the appellant as the owner of the disputed land as the result reached into an erroneous decision.
4. That the trial chairperson erred in law and in fact when failed to consider the fact that the appellant herein was given the said disputed land by her father since 1986 and has been in peaceful possession of the same for more than 25 years uninterrupted as the result, she delivered a wrong decision.
5. That the trial tribunal erred in law and in fact when failed to properly evaluate and consider the evidence adduced before it as a result a bad decision was erroneously reached.

On hearing of the appeal, the respondent did not enter appearance despite being duly served with summons by the appellant, thus, the appeal proceeded ex parte in the absence of the respondents, and the appeal was disposed of by way of written submission.

Before going to the substance of this appeal, I noted that there are anomalies in the proceedings of the trial tribunal which are; **firstly**, a change of trial chairperson without assigning reasons for such changes. Hearing of the case initially commenced before Hon. Wagine-Chairperson who recorded the evidence of PW1 however at page 15 of the trial proceedings, it appears that on 02/03/2017 there was a change of a chair person from Hon. Wagine

to Hon. Kagaruki who took over the matter without assigning reasons to the parties of such changes as why Hon. Wagine could not conclude hearing of the case taking into account that, he had already recorded the evidence of PW1. However, in my reading of the judgment, the reasons of such change were not assigned thereof and **secondly**, that, the respondent who referred this appeal is deceased and not the administrator of the estate of the said Apael Ndelilio, the same anomaly appears in the copy of the judgment and decree of the trial tribunal.

Following the above noted anomalies, the appellant's counsel was inquired by the court to address on this issue. Mr. Ndibalema informed this court that, the error to join the administrator of the estate of the deceased is curable and could be rectified, however as to the issue of failure to give reasons by the successor chairperson as to why the predecessor chairperson could not complete the hearing of the case, the learned counsel argued that the said error renders the proceedings a nullity. The counsel thus prayed for an order quashing the proceedings of the trial tribunal from 02/03/2017, judgment and decree made out of the proceedings which were assumed by the successor without jurisdiction.

It is cardinal principle that, it is not mandatory for a successor judge or magistrate or chairperson of the DLHT to resummon the witnesses who testified and heard by his trial predecessor unless he or she has found that, for the interest of justice, there is a need of resummoning the witnesses. The question on the change of Magistrate or any judicial officer or quasi-judicial officer is provided under Order XVIII Rule 10 (1) which reads;

“10 (1) Where a judge or magistrate is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum has been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.”

Whenever, it is observed that there are changes of either a Judge, Magistrate or Chairperson as it may be, then reasons for the failure of the first umpire to complete the trial must be recorded. This statutory requirement was properly stressed in the case of **Priscus Kimaro vs. Republic**, Criminal Appeal No. 301 of 2013 (unreported), where it was held;

"Where it is necessary to re-assign a partly heard matter to another magistrate the reason for the failure of the first magistrate to complete must be recorded. If that is not done, it must lead to chaos in the administration of justice. Anyone for personal reasons could pick up any file and deal with it to the detriment of justice."

Another case where this legal requirement was judicially emphasized is the case of **Issack Stephano Kilima vs The Republic**, Criminal Appeal No. 273 of 2011 (Unreported) where it was stated inter alia that;

"One magistrate cannot simply continue with a trial commenced by another magistrate without stating the reasons for the change. This is a requirement under the law and therefore has to be complied with. It is important for the sake of transparency so as not to prejudice the accused in anyway."

As intimated above, it is apparently clear that, in the case at hand the successor chairperson did not assign any reason as to why she had taken over the case from her fellow trial predecessor and the reason as to why her predecessor could not continue with the hearing and eventually determine the case. This requirement, in my considered opinion, is not only to notify the parties of the reason (s) of the change of the former chairperson who started the trial of the dispute but also to enable the successor chairperson

to appropriately assume jurisdiction in trying the case that was formerly presided over by his/her trial predecessor.

The effect of the breach to record the reasons as to why the first trial predecessor could not proceed and complete the trial of a certain case is to render the subsequent proceedings a nullity. It is therefore the findings of this court as correctly argued by the learned counsel for the appellant that, the proceedings of Hon. Kagaruki are hereby declared a nullity since they were conducted without jurisdiction that is the trial tribunal's proceedings from 02/03/2017, the judgment entered against the appellant, decree and any ancillary orders thereof are equally nullified.

As the proceedings judgment and decree nullified have been, the practice has been to direct the trial court to recommence the trial from the stage where the first adjudicator ended 18<sup>th</sup> October 2016). Consequently, for avoidance of tediousness and in observance to the rule against bias or perceived bias, I hereby order for a retrial of the dispute before another successor chairperson from the stage where Hon. Wagine ended.

It is so ordered.



**M. R. GWAE**  
**JUDGE**  
**29/10/2021**