

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

AT BUKOBA

LAND CASE APPEAL NO. 107 OF 2020

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 205 of 2010)

IDRISA KAHUNGU.....APPELLANT

VERSUS

ATHANAZ KAFURAMA..... RESPONDENT

JUGDMENT

Date of Judgment: 28.03.2022

A.Y. Mwenda, J.

Mr. Idrisa Kahungu (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 205 of 2010, preferred this appeal with a total of six (6) grounds.

When this appeal was scheduled for hearing both parties hired legal services from learned counsels, that is Mr. Frank Karoli for the Appellant and Mr. Ally Chamani for the Respondent.

In his submission in chief the learned counsel for the appellant submitted that, after going through the proceedings of the trial tribunal they noted some irregularities. He submitted that before the trial tribunal this case was presided over by four different chairmen, that is from page 38 up to page 55, it was placed

before Hon. R. L. Chenya who took the evidence of the respondent (the then applicant). He submitted that from page 55 to page 72 Hon. Assey took over and begun by recording the evidence of AW2 but he did not assign the reasons for his taking over the case.

He further submitted that, again from page 73, Hon. Mogasa took over up to page 92 where he assigned reasons as to why the file was placed before him but the said proceedings (by Hon. Mogasa) were nullified by the High Court thus another proceedings came into play. He stated that from page 4 up to page 22 of new proceedings, Hon. Mtei, chairman took over and begun by taking defense evidence but he did not state reasons as to why he took over.

Counsel for appellant submitted that, ***section 51 (2) of Land Dispute Court Act [Cap. 216 R.E 2019]*** provide that when there is inadequacy in land regulations then Civil Procedure Code shall apply. With regard to this section the learned counsel made reference ***Order XVIII Rule 10 (1) of the Civil Procedure Code [CAP 33 R.E 2019]*** which requires a magistrate or judge when taking over the proceedings to give reasons for such change.

He further submitted that, failure to assign reasons for taking over have prejudiced the appellant because the Hon. Chairman who prepared the judgment did not hear the witnesses as he did not have opportunity to check their demeanor of the witnesses. Apart from that he also stated that even the handwriting of Hon.

Chairmen is different and there is a likelihood of causing injustice. He thus prayed the proceedings in Application No. 205 of 2010 from page 55 dated 18/01/2016 to proceedings dated 17/9/2020 to be nullified and an order for trial de novo from proceedings dated 25/8/2015 where the last Hon. Chairman ended to be issued. In reply to the submissions by the learned counsel for the appellant, the learned counsel for respondent submitted that the laws applicable in normal civil suit are different from those applicable in land matters. He submitted that for Land matters, Land Dispute Courts Act was enacted which provide for substantial justice especially under section 45 of the Act. He also submitted that decision cannot be altered if irregularity did not occasion a failure of justice.

He further submitted that, ***section 45 of the Land Dispute Court Act [Cap 216 RE 2019]*** is not available in the ***Civil Procedure Code and Order XVIII Rule 10 (1) of Civil Procedure Code [Cap 33 RE 2019]*** cannot apply in land matters. He stated that ***section 51 (2) of the Land Dispute Court Act [Cap 216 RE 2019]*** is inapplicable in the circumstances of this matter because there is specific law to that effect.

He further submitted that from the records, it is only Hon. Assey who did not assign reasons but Hon. Mtei did and this is found at page 10 of the proceedings. He submitted further that with regard to injustices posed by learned counsel for appellant for failure to see the demeanor of witnesses, he said even by assigning reasons the same would not change.

He also submitted that each case is determined according to its circumstances and authorities brought are distinguishable. He concluded by submitting that in case the irregularities are found to occasion injustice then proceedings from where the anomaly appears shall be quashed and the file shall be remitted before District Land and Housing Tribunal to proceed from where it ended.

In brief rejoinder the counsel for appellant submitted that since Mr. Chamani admits that Hon. Chairman did not assign reason from 55 of the previous proceeding this is enough to support his argument.

In regard to submission that Hon. Mtei assigned reasons, counsel for the appellant submitted that this is not true as Hon. Mtei did not record the reasons despite being reminded by the learned Advocate. To him these irregularities are enough to vitiate the proceedings.

He further submitted that Civil Procedure Code [Cap 33 RE 2019] is applicable in land matters if there is a lacuna in the Land Dispute Court Act [Cap 216 RE 2019], he then made reference to Section 51 (2) of the Act. He concluded by submitting that since there are authorities that interpret Order XVIII Rule 10 (1) of Civil Procedure Code [Cap 33 RE 2019] then this court should find the proceedings of trial tribunal as tainted with irregularities and nullify them.

Having gone through the court's records as well as submission by both parties the issue for determination before this appeal is whether the proceedings before the District Land and Housing Tribunal are tainted with irregularities.

This court having perused the trial Tribunal's proceedings found out that before the trial tribunal Hon. Chenya begun by taking the evidence of AW1 but later Hon. Assey took over from 18.01.2016 to 28.09.2017. During taking over he did not assign reasons for such. Later on, Hon. Mogasa took over and assigned reasons as to why there was change of hands from Hon. Assey to him. Again, on 06.01.2010 Mr. Mtei Hon. Chairman presided over and continued to record the evidence without giving reasons as to why there was a change of hands from Mr. Mogasa Hon. Chairman, to him and this was fatal.

It is the requirement of law under ***Order XVIII Rule 10(1) of the Civil Procedure Code [CAP 33 R.E 2019]*** that;

"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".

The take away from this order is that a Magistrate or Judge may take over a suit from his predecessor at any stage and shall do so upon putting on record as to why he/she has to take up a case that is partly heard by another.

The effect of failure to assign reasons during taking over has been reflected in several decisions of this court and the Court of Appeal. This court in the case of ***Theorbad Kaganda vs Fr. Fortunats S. Bijura (administrator of the estate of the late Atony Bijura) Land Appeal No. 21 of 2016*** (unreported) held that;

"Change of chairpersons without giving reasons, coupled with unexplained change of assessors vitiate the proceedings of District Land and Housing Tribunal."

Again, in the case of ***Charles Chama & Two Others vs The Regional Manager, TRA & Three Others Civil Appeal No. 224 of 2019 (CAT)*** citing in approve the case of ***Ms. Georges Centre Ltd vs The Attorney General and Another Civil Appeal No. 29 of 2016*** where the Court held inter alia that;

"The general premise that can be gathered from the above provision is that once the trial of the case has begun before one judicial officer that judicial officer has to bring it to completion unless for some reasons, he/she is unable to do that. The provision cited above imposes upon a successor judge or magistrate an obligation to put on

record why he/she has to take up a case that is partly heard by another.


There are number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial unless it is not practicable to do so. For one thing as suggested by Mr. Maro, the one who sees and hears the witness is in the best position to assess the witness's credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any cases before a court of law. Further, integrity of judicial proceedings hinges on transparency. Where there is no transparent justice may be compromise." [the emphasis is ours]

In this appeal both counsels are in agreement that during takeover of the case by Hon. Chairmen no reasons were advanced and this were irregularities. They then suggested if this court sees there was such irregularities, then particular proceedings be expunged and hearing commence from where it ended. However, in circumstances of this case, this court finds, in the interest of justice that the whole proceedings be nullified to enable the party interested be prefer a fresh suit before a competent tribunal.

From the foregoing observation this appeal is allowed, the whole proceedings of the District Land and Housing Tribunal are quashed, judgment and any other order emanating there from are hereby set aside.

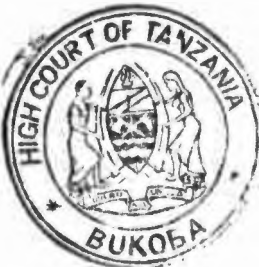
Each party shall bear its own costs.

It is so ordered.



A.Y. Mwenda
Judge
28.03.2022

This judgment is delivered in chamber under the seal of this court in the presence of Mr. Idrisa Kahungu the appellant and in the presence of Mr. Ally Chamani learned counsel for the respondent.



A.Y. Mwenda
Judge
28.03.2022

