

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

LAND CASE APPEAL No. 7 OF 2022

(Originating from Land Application No. 15/2017 of the District Land and Housing Tribunal for Kagera at Bukoba)

DEUEDITH SYLIVERY.....APPELLANT

VERSUS

JOVENARY KATEMBO (Administrator of the Estate of the late Sylivery

Kayungi).....1st RESPONDENT

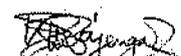
ASTERIA SYLIVERY.....2ND RESPONDENT

JUDGMENT

25th August & 25th August 2022

Kilekamajenga, J.

The late Sylivery Kayungi died in 1998 leaving behind some landed properties. He was also survived by widows and children. The second respondent is the widow and the appellant is the son of the deceased; the second respondent is the step mother of the appellant. The appellant and second respondent are now battling over a piece of land left behind by the deceased. Sometimes in 2009, the first respondent applied for administration of the estate of the late Sylivery Kayungi at Buhendangabo Primary Court and he was so granted. Later, he filed a case in District Land and Housing Tribunal at Bukoba vide Land Application No. 15 of 2017. The case was decided in favour of the respondents hence this appeal. The appellant coined six grounds of appeal to impugn the decision of the trial tribunal. However, for the reasons stated herebelow, I take the discretion not to reproduce the grounds of appeal.



The hearing of this appeal brought the appearance of the appellant who enjoyed the professional legal services of the learned advocate, Mr. Mathias Rweyemamu. The first respondent was present in person and the second respondent was reported to be too old to attend the hearing of the appeal. However, the two respondents hired the professional legal services of the learned advocate, Raymond Laurent. During the hearing, the counsel for the appellant addressed the court on one major illegality which might have vitiated the proceedings of the trial tribunal. He argued that, there was change of trial chairman without assigning reasons. He cited some few examples from the proceedings of the trial tribunal to bolster his argument. He further invited the court to consider the decision of the case of **Tryphone Elias @ Ryphone Elias and another v. Majaliwa Daudi Mayaya, Civil Appeal No. 186 of 2017**, CAT at Mwanza. Finally, he urged the court to nullify the proceedings of the trial tribunal and decision thereof and order the retrial of the case.

Mr. Laurent for the respondent supported the submission from the counsel for the appellant. He insisted that, the change of the trial chairman was not accounted for. For instance, the framing of issues was done under the chairmanship of R.E. Assey but the witnesses were heard by Mogassa and the successor chairman did not record any reason for taking over the case. Mr. Laurent argued further that, as the framing of the issues is part of the hearing of the case, the successor chairman was supposed to give reasons for taking over the case. Failure to assign reasons for change of the trial chairman vitiated the

proceedings and the decision thereof. The counsel, however, objected the prayer to order retrial of the case. Instead, he urged the court to leave the matter open for any interested person to file a fresh suit after the nullification of the proceedings and decision thereof.

The submission from the counsel for the respondents did not solicit any rejoinder submission from the counsel for the appellant.

In this appeal, what seems to be an apparent illegality is the change of trial chairman without assigning reasons. This issue prompted my perusal of the proceedings of the trial tribunal and I found the following information: The framing of issues was done on 04th May 2017 before R.E. Assey as the presiding chairman. When the case came for hearing on 14th December 2017, it was presided by E. Mogasa; however there are no reasons to explain why Mogasa took over the case. Normally, the hearing of the case begins immediately after framing of the issues, it was therefore necessary for the successor chairman to give reasons for the change of the chairman. The above requirement of the law derives from **Order XVIII, Rule 10(1) of the Civil Procedure Code, Cap. 33 RE 2019** which also applies in the District Land and Housing Tribunal. See, section 51(2) of the Land Disputes Courts Act, Cap. 216 RE 2019. Order XVIII, Rule 10(1) of the Civil Procedure Code provides that:

'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.'

The rationale for giving reasons for taking over a case from another judge, magistrate or chairman has been stated in a number of cases including the case of **MS Georges Centre Ltd v. The Attorney General and Another, Civil Appeal No. 29 of 2016**, where the Court of Appeal of Tanzania stated that:

'The general premise that can be gathered from the above provision is that once the trial of a case has begun before one judicial officer that judicial officer has to bring it to completion unless for some reason 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 a number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it 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 case be a court of law. Furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised.'

Apart from the rationale stated above, but the consequence that follows after the successor chairman failing to give reasons for taking over a case is that, the successor chairman lacks jurisdiction to try the case. Therefore, in absence of

jurisdiction, whatever he/she records is a nullity. In the case of **Abdi Masoud @ Iboma and others v. Republic, Criminal Appeal No. 116 of 2015**, CAT (unreported), which was quoted in the case of **Kinondoni Municipal Council v. Q Consult Limited, Civil Appeal No. 70 of 2016**, CAT at Dar es salaam, (unreported) the Court of Appeal emphasized that:

'The absence of any reason on the record for the succession by a judicial officer in partly heard case, the succeeding judicial officer lack jurisdiction to proceed with the trial and consequently all proceedings pertaining to the takeover of the partly heard case become a nullity.'

In the case of **Omary Fundi Kondo Humbwaga v. Said Mwinjuma Humbwaga and Noel Paulo Ndikumigwa, Land Appeal No. 27 of 2019**, HC at Dar es salaam, this Court stressed further that:

'Failure to state reasons for such transfer suggests that the case file has never been re-assigned to any other chairman and that other chairman has no jurisdiction to adjudicate the case for want of proper assignment. This makes all proceedings that continued without proper reassignment to be nullity.'

In the upshot therefore, the successor chairman, who actually took over the case and did not give reasons lacked jurisdiction to try the case. For that reason, the proceedings and the decision thereof are a nullity. I hereby allow the appeal, I quash and set aside the proceedings of the trial tribunal and decision thereof. I further order the matter to remain open for any interested parson to file a fresh

suit before a competent forum. As the illegality was occasioned by the trial tribunal, I order no costs to either of the parties. It is so ordered.

Dated at Bukoba this 25th Day of August 2022.



Ntemi N. Kilekamajenga
JUDGE
25/08/2022

Court:

Judgment delivered this 25th August 2002 in the presence of the appellant present in person and the first respondent present in person. The second respondent was absence and the counsel for the respondent was present. Right of Appeal explained to the parties.



Ntemi N. Kilekamajenga
JUDGE
25/08/2022

