

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

**(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE REVISION NO. 06 OF 2021**

*(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Appeal No. 26 of 2021 and original Civil Case No. 05 of 2020 at Kaagya Ward Tribunal)*

**CORONERY NDYETABULA..... APPELLANT**

**VERSUS**

**1. GOZIBERT KASHAGA**

**2. WINFRIDA PASTORY**

**3. YULIANA LEVELIAN**

**4. ANNAMERY PHILIBATI**

**5. HONORATA EMMANUEL**

**.....RESPONDENTS**

**RULING**

*Date of Ruling: 09.09.2022*

*A.Y. Mwenda J,*

This application is for revision brought by the way of chamber summons supported by the applicant's affidavit. It is made under section 43 (1) of the Land Dispute Courts Act [CAP 216 R.E 2019]. The applicant is applying to this court for an order calling the records of the District Land and Housing Tribunal in Land Appeal No. 26 of 2021, in order to satisfy on the legality, correctness and propriety of the same and orders thereon.

In his reply, the respondent under the services of Mr. Abel Rugambwa, learned counsel, filed counter-affidavit opposing the application.

When this application was scheduled for the hearing, the applicant appeared in person without legal representation while the respondent hired the legal services from Mr. Abel Rugambwa.

In his submission in chief the Applicant submitted that the Hon. Chairman nullified the proceedings of the Ward Tribunal on the ground that the names of the respondents are not reflected in the proceedings. He said that was not correct because from page 4 to 17 of the Ward Tribunal's proceedings the 2<sup>nd</sup> to 5<sup>th</sup> respondents testified before the ward tribunal and they were cross examined.

He submitted that before the District Land and Housing Tribunal, the tribunal found out that the only person who was involved in the case before the trial tribunal is Gozibert Kashaga as the decision was against him but not the 2<sup>nd</sup> to 5<sup>th</sup> respondents. He further submitted that he won the case before the Ward Tribunal and Gozibert Kashaga appealed to the District Land and Housing Tribunal. He then prayed this application to be allowed.

In reply to the submission by the Applicant, Mr. Abel Rugambwa the learned counsel for the respondent submitted that, the 2<sup>nd</sup> to 5<sup>th</sup> respondents are not on the records of the Ward tribunal as parties to the suit. He submitted that the records are clear that parties in Civil Case No. 5 of 2020 before the ward Tribunal were CORONERY NDYETABURA VERSUS GOZIBERT KASHAGA AND OTHERS. He stated that the so called others were not stated.

The learned counsel further submitted that at page 4 to 16 of the Ward Tribunal the records shows that the 2<sup>nd</sup> to 5<sup>th</sup> respondents appeared as witnesses and not as parties to the suit. He said the 2<sup>nd</sup> to 5<sup>th</sup> respondents being the witnesses does not mean they are also respondents and if so the citation of the case ought to have indicate as such.

He submitted that at page 2 of the ruling the Hon. Chairman of the District Land and Housing Tribunal stated that the names of others appellants were not revealed at the Ward Tribunal. He said the consequences for failure to reveal the names of the parties is that the decree cannot be executed.

He went on to submitting that since the records are clear, this court will be in a position to see if the names of the respondents i.e. 2<sup>nd</sup> to 5<sup>th</sup> were listed and made parties to the suit. He submitted that the applicant listed their names in the present application's citation as opposed to the citation of the Ward and District Land and Housing Tribunal.

The learned counsel submitted that at paragraph 7 of the applicant's affidavit the applicant stated that the Hon. Chairman raised this issue Suo motu. He said this is not true because in the proceedings of the District Land and Housing Tribunal at page 2 he (Mr. Rugambwa) raised this issue and prayed the Hon. Chairman to invoke his revisional powers under section 36 of The Land Dispute Courts Act. He concluded his submissions by stating that this application has no merits. He thus prayed this Court to uphold the decision of the District Land and Housing Tribunal.

In rejoinder the Applicant submitted that the 2<sup>nd</sup> to 5<sup>th</sup> respondents were not witnesses as they were referred to as 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> accused persons. He then prayed this application to be allowed.

Having gone through the submission by both parties the issue for determination is whether or not this application is meritorious.

In the present application the applicant prays to this court to revise the decision of the District Land and Housing Tribunal which nullified the decision of Kaagya Ward Tribunal on the ground that the decree (of the ward tribunal) cannot be executed against the to 2<sup>nd</sup> to 5<sup>th</sup> respondents who were not parties to the case in Civil Case No. 5 of 2020. The records show that before the Ward Tribunal the parties were Coroneri Ndyetabura vs Gozibert Kahanga na wenzake and before the District Land and Housing Tribunal parties were Gozibert Kashaga na wenzake vs Coroneri Ndyetabura.

It is trite law that the plaintiff has a duty to identify and cite the correct name of the defendant and failure to do so renders the proceedings incompetent.

This position has been stated by this court in the case of Stephen Kibwana vs Banc ABC LTD Land Case No. 174 of 2017 where the court held inter alia that;

*"It is part and parcel of our jurisprudence that, in any action, the plaintiff is saddled with a duty to identify and cite the correct name of the defendant"*

*and that, failure to do so renders the proceedings incompetent."*

In our present application it is true from the records that the so called **"WENZAKE"** were not mentioned in both the Ward Tribunal and the District Land and Housing Tribunal. Therefore, proper naming of parties is very fundamental to any case, and failure to abide by this procedural requirement is a defect that goes to the root of the case.

Following the above analysis, this application lacks merits and it is hereby dismissed with costs and the decision of the District Land and Housing in Appeal No. 26 of 2021 is hereby upheld.

It is so ordered.



A.Y. Mwenda

**Judge**

09.09.2022

This ruling is delivered in chamber under the seal of this court in the presence of Mr. Abeli Rugabwa the learned counsel for the respondents and Mr. Coroneri Ndyetabula the Applicant.



A.Y. Mwenda

**Judge**

09.09.2022