

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

LAND CASE APPEAL NO. 03 OF 2021

(Arising from the District Land and Housing Tribunal for Bukoba at Kagera in Application No. 57 of 2016)

INYASA VALERIAN.....APPELLANT

VERSUS

TITUS ROBERT RWEYEMAMU..... RESPONDENT

EXPARTE JUDGMENT

Date of Judgment: 26.08.2022

Mwenda, J.

Mr. Inyasa Valerian (the Appellant), being dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in Land Application No. 57 of 2016, preferred this appeal with a total of six (6) grounds. In that matter the applicant (now the respondent) was declared the rightful owner of the Suit Land and the 2nd and 3rd respondents were restrained from further trespass to the land in question.

When this appeal was scheduled for hearing on 11th April 2022 this court issued an order for substituted service by publication against the respondent. The appellant complied with the order of the court by publishing the respondent's summons through Uhuru Newspaper dated the 26th April 2022 at page 19.

Following a proof of publication of the summons against the respondent this appeal proceeded ex parte against him (the respondent).

During the hearing of this appeal the appellant appeared in person without legal representation.

Before the hearing of this appeal could start, this court, Suo Motu, noted irregularity in the proceedings of the District Land and Housing Tribunal regarding the change of Chairmen without assigning reasons. Since this was not one of the grounds of appeal, the appellant was then invited to submit only in that regard because the said irregularity has the effect of vitiating the whole proceedings.

In his submissions, the appellant submitted that the issue of change of chairmen is a legal issue in which he, being a layman is not conversant with. He concluded by stating that he leaves it to the court to decide.

As stated above, this court noted illegality regarding change of Hon. Chairmen. In the trial Tribunal's proceedings, the court noted that this case was placed before Hon. Assey who handled it from its filing until framing of issues i.e. from 21st March 2016 to 11th September 2017. Later on, Hon. Mogasa took over i.e. from 8th January 2018 until 25th November 2020 when the judgment was pronounced. While taking over, Hon. Mogasa however did not assign reasons for Mogasa taking over the case contrary to the legal requirements envisaged

under **Order XVIII Rule 15(1) of the Civil Procedure Code (Amendment of the first schedule)** the said order reads 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. **Provided that the reasons for taking over are recorded in the proceedings by the successor judge or magistrate at the time of taking over and communicated to the parties.**"*

Applying the principle under Order XVIII Rule 15(1) above, 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 od 2016** (unreported) held that;

"Change of chairpersons without giving reasons, coupled with unexplained change of assessors vitiates 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 with approval the case of ***Ms. Georges Centre Ltd vs The Attorney General and Another Civil Appeal No. 29 of 2016***, the Court held inter Lia 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]

Guided with the above position of the law since Hon. Mogasa, took over the case without assigning reasons, then the whole proceedings of the lower Tribunal are a nullity. This court therefore, finds merits in this appeal and it is hereby allowed by nullifying the proceedings of the District Land and Housing Tribunal in Application No. 57 of 2016. It's judgment and any other order emanating therefrom are hereby set aside. Any party interested to pursue his rights may prefer a fresh suit before a competent tribunal.

Each part shall bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

26.08.2022

This ex parte judgment is delivered in chamber under the seal of this court in the presence of Mr. Inyasa Valerian the appellant.




A.Y. Mwenda

Judge

26.08.2022