

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

LAND CASE APPEAL NO. 23 OF 2021

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 185 of 2005)

ISIDORY LUGAIKALIRA APPELLANT

VERSUS

WILFRED BABYEGEYA RESPONDENT

JUDGMENT

Date of Judgment: 08. 09.2022

A.Y. Mwenda J,

Before the District Land and Housing Tribunal for Kagera at Bukoba, Mr. Wilfred Babyegeya the respondent (then the applicant) filed a suit against the appellant (then the respondent) claiming he encroached and built a house on his Plot No. 161 located at Buyekera Kanoni Custom Road at Bukoba Town. At the end of the day the applicant (now the respondent) was declared the rightful owner of the suit land and an order for vacant possession and demolishing any erected structure was issued against the respondent (now the appellant).

Aggrieved with the said decision the appellant appealed to this court with seven (7) grounds which reads as follows;

- 1) That the Trial Tribunal grossly erred in law for failure to uphold the preliminary objection that the case was wrongly filed without joining TANZANIA BUILDING AGENCY and ATTORNEY GENERAL on the

pleadings alleged to have been allocated the disputed house to the application to the respondent. (sic)

- 2) That the trial Chairman grossly erred in law and in fact to conduct their trial and issued judgment without aid of Tribunal assessors.
- 3) That the trial chairman grossly erred in law and fact to deny the applicant his opportunity to call his witnesses who were competent and compellable.
- 4) That the trial Chairman grossly erred in law and fact to believe the testimony of the respondents witness which has no evidential value to prove the case on the part of the respondent.
- 5) That the Trial Chairman grossly erred in law to base his finding on the documentary evidence which did not competently proved the case of the respondent.
- 6) That the tribunal grossly erred in law and fact for failure to rule out that the appellant occupied, owning customarily and surveyed the suit premise Plot No. 161 Buyekera Kanoni Customs Road, Bukoba Township in year 1969 and developed the land for over 40 years without any interruption. Which entitled the appellant right of ownership.
- 7) That the trial tribunal grossly erred in law and fact to grant the right of ownership to the respondent, who had never worked in Government scheme, rented to the premises and occupied the suit premises to enable him to have been allocated the suit premises.

At the hearing of this appeal the appellant was represented by Mr. Mathias Rweyemamu, learned counsel while the respondent hired the legal services from Mr. Abel Rugambwa.

During the hearing of this appeal Mr. Rugambwa while introducing himself before the court, submitted that upon looking at grounds of appeal especially the second ground regarding involvement of assessors, he noted that assessors were not fully involved during the hearing of the case. He said in the Tribunal's proceedings, the records show that during the hearing of the applicant's case the assessors were present, however during defence hearing assessors were not involved and there is no reason advanced as to why they did not participate in that stage. He thus concluded his submission by stating that the whole proceeding is nullity and this court shall order a fresh hearing of the suit.

In reply to the submissions of learned counsel for the respondent Mr. Mathias submitted that he concurs with Mr. Rugambwa's submissions and the prayer prayed.

I have revisited the records and as it was rightly submitted by Mr. Rugambwa the trial Tribunal's proceedings are tainted with illegalities. The said records show that from page 11 to 42 of the Tribunal's proceedings, during the hearing of the applicant's case, the Hon. Chairman sat with the aid of assessors who had opportunities to ask questions. But later, during the defense hearing assessors were not involved at all and there is no reasons to that effect. During

the hearing of the case before the District Land and Housing Tribunal, the Tribunal is required to be properly constituted. The trial tribunal is said to be properly constituted when it is chaired by the Hon. Chairman and assisted by not less than two assessors who are required to fully participate in the proceedings and give out their opinion before the Hon Chairman reaches the judgment. This position is by virtue of Section 23 (2) of the Land Dispute Court's Act [CAP 216 R.E 2019]. This section states as follows;

*23 (2) The District Land and Housing Tribunal **shall be duly constituted when held by a chairman and two assessors** who shall be required to give out their opinion before the Chairman reaches the judgment."*

In the present appeal, as I have stated earlier the records show that during the hearing of the applicant's case i.e. from page 11 to page 42 the Hon. Chairman sat with the aid of assessors one H. Muyaga and F. Rutabanzibwa. However, at defense hearing the Hon Chairman did not sit with them. On the other hand, in the copy of typed the judgment the Hon. Chairman stated that and I quote;

"In this case there is no assessor's opinion as the tenure of H. Muyaga and F. Rutabanzibwa expired before the case was due for judgment."

It seems the Hon. Chairman was aware with the provisions of section 23(3) of the Land Disputes Court's Act which covers the situation where the Hon. Members (assessors) who were present at the commencement of proceedings are absent. It is however important to note that Hon. Chairman is required to notify the parties and put on records in case the members (assessors) are unable to proceed with the hearing on whatever reasons such as expiry of their tenure.

In the present appeal therefore, since the Hon Chairman did not record in the proceedings regarding expiry of assessor's tenure then that omission is fatal which vitiates the whole proceedings. That being said the whole proceedings of the District Land and Housing Tribunal is a nullity.

This appeal therefore succeeds to the extent of nullifying the proceedings of District Land and Housing Tribunal's Application No. 185 of 2005 and the judgment and any order emanating therefrom are hereby set aside. I order trial de novo in case the respondent is still interested to pursue his rights, Each party shall bear its own costs.

It is so ordered.


A.Y. Mwenda
Judge
08.09.2022


Judgment delivered in chamber under the seal of this court in the presence of Mr. Abeli Rugambwa the learned counsel for the Respondent and in the presence of Mr. Mathias Rweyemamu the learned counsel for the Appellant.




A.Y. Mwenda

Judge

08.09.2022