

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBIA

LAND CASE APPEAL NO. 4 OF 2022

(Originating from Application No. 9 of 2020 in the District Land and Housing Tribunal for Bukoba at Bukoba)

PELESI KAJELERO ----- 1ST APPELLANT

GEORGINA NYANGOMA-----2ND APPELLANT

VERSUS

NOVATI MUCHAEL KIBIRA----- RESPONDENT

JUDGMENT

20/09/2022 & 30/09/2022

Isaya, J.

The Respondent sued the Appellant for encroaching his land which he claimed to have been given by his father in 2004 in Application No. 9 of 2021 at the District Land and Housing Tribunal for Bukoba. He claimed that his father bought the land from one Rwenyagira and had given it to the 2nd Appellant, George Nyangoma for temporary use. The 1st Appellant alleged that she bought the Suitland from one Rwenyagira Kabinga in 2008 for Tshs, 800,000/= . The 2nd Appellant asserted that she bought the Suitland from Alfred Kabinga in 2002 for Tshs. 360,000/=

After the trial, the District Land and Housing Tribunal declared the Respondent the rightful owner and the Appellants as trespassers. They were ordered to vacate from the Suitland. The Appellants were aggrieved with the decision and order of the trial tribunal hence this appeal.

The memorandum of appeal filed, contained four grounds of appeal coached thus:



- 1. That, the tribunal erred in law and fact to hold that the respondent is the legal owner of the dispute land since the respondent failed to prove as to the root of the title of the land in dispute;*
- 2. That, the trial tribunal erred in law and fact for failure to consider the cogent evident by the appellants including transfer deed and the evidence that they enjoyed the suit premise from their purchaser and the dispute arose after the demise of Alfred Rweyengira;*
- 3. That, the trial tribunal erred in law for failure to fully engage the assessors and by violating principle governing the procedure for visiting the locus quo;*
- 4. That, the trial tribunal erred in law to rely on cooked evidence without sufficient proof from witnesses”.*

When the matter was called on for hearing, the Appellant were represented by Mr. Matete, Advocate, while the Respondent was represented by Ally Chamani, Advocate.

During the submission, Mr. Matete informed the court that he would argue only on the 3rd ground because the same is capable of disposing of the whole matter due to the illegality noted. He therefore argued that the trial tribunal failed to fully engage the assessors and violated the procedure in visiting the locus in quo. He referred this court to the proceedings in the coram dated 10.05.2021 where the assessors did not appear in the coram but thereafter appeared asking questions to the witnesses. They did not appear too in the coram on 05.10.2021 when the tribunal framed the issues.



Mr. Matete turned to another point that the opinions of the assessors were not recorded though on the 22nd October, 2021 the assessors gave their opinions.

He again faulted the proceedings of the trial tribunal that the visiting of the locus in quo on 08.10.2021 did not follow the procedure for failure to reconvene to make proceedings and read over the notes to the parties. The witnesses were not accorded opportunity to explain what transpired during the visit at the locus in quo too.

He submitted that for those illegalities, the proceedings and judgment are irregular and ought to be quashed and the judgment set aside. He prayed the matter be heard afresh with a different chairman, sitting with a new set of assessors.

Mr. Chamani in his submission did not challenge the submission on the irregularities pointed out by Mr. Matete but only resisted that all the proceedings should not be declared a nullity but the irregular part starting on 10.05.2021. He too conceded that since the irregularity was caused by the tribunal, there should be no order as to costs.

Now, when both parties have submitted, I should pose here and observe that the parties are in agreement that there are irregularities in the proceedings of the trial tribunal caused by failure to fully engage the assessors and violating the procedure in visiting the locus in quo.

As pointed out by both learned friends, the law requires the assessors to be fully involved in the proceedings of the tribunal but also in decision making. Section 23 (2) of the Land Disputes Court Act, Cap 216 reads as following;

"The District and Housing Tribunal shall be constituted when held by a chairman and two assessors who shall be required



to give out their opinion before the chairman reaches the judgment"

The import of the above cited provision of law gives a mandatory requirement for the assessors to be fully involved in all stages till the judgment is reached. In the Land Case Appeal No. 23 of 2020 **Aloysius Benedicto Rutaihwa Vs. Emmanuel Bakundukize Kendurumo & 9 Others**, High Court at Bukoba, Kilekamajenga, J confronted with the same situation breathed the following words at page 8 of the judgment.

"The presence of assessors is not a ceremonial procedure but their participation must be reflected at all levels of the trial which include giving opinion before delivering the judgment."

The failure by the chairman to record the opinions of the assessors in a similar situation like this one was dealt upon by the Court of Appeal in **Amer Mbarak and Kahwili**, Civil Appeal No. 154 of 2015 (unreported) where the court stated:

"Therefore, in our own considered view, it is unsafe to assume the opinion of the assessors which is not on record by merely reading the acknowledgment of the chairman in the circumstance, we are of a considered view that, assessors did not give any opinion for consideration in the preparation of the tribunal judgment and this was a serious irregularity."

See also the case of **Tubone Mwambeta Vs. Mbeya City Council**, Civil Appeal No. 287 of 2017, CAT at Mbeya (unreported)



In the light of the above cited cases, I find that the tribunal caused a serious irregularity for failure to record the opinion of the assessors.

There is another irregularity pointed out by both advocates, the failure to reconvene after visiting the locus in quo and failure to accord opportunity to witnesses to explain on their evidences. It is important to note that the essence of visiting locus in quo enables the court to see objects and places referred to in evidence physically and clear doubts arising from conflicting evidence (if any) about physical objects on the land boundaries (see the case of **Akosile vs Andye 2011**) NWLR cited with approval by the CAT in **Avit Thadeous Massase Vs. Isidori Assenga**, Civil Appeal No. 6 of 2017 CAT (unreported). And since the visiting of the locus in quo is optional but when resorted to the procedure ought to be observed as stated in the Case of **Sikuzani Said Magambo and Another Vs. Mohamed Roble**, Civil appeal No. 197 of 2018 (unreported) where it was stated;

"There is no law which forcefully and mandatorily requires the court or tribunal to conduct a visit at the locus in quo, as the same is done at the discretion of the court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during trial. However, when the court or the tribunal decides to conduct such a visit, there are certain guidelines and procedures which should be observed to ensure fair trial"

All parties, their witnesses and their advocates were required to be present at the locus in quo and notes ought to be taken and properly recorded, and then the court or tribunal must reconvene or assemble in



the court to consider notes obtained from the visit (see the **case Nazir M. H. Vs. Gulamali Tazal Janmohamed** [1980] TLR 209.

What then can be said of this appeal? As pointed above, the stated irregularities vitiate the proceedings and the judgment reached. And having considered that the chairman who presided over might not be in the same station of work but also that the tenure of assessors may have expired, I find it, for the sake of justice not to quash or nullify only the part of the proceedings but all proceedings, shortly I invoke the revisional powers of this court Under Section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 R.E 2019 and nullify the whole proceedings, quash and set aside the judgment and decree of the trial tribunal. I order the matter be heard afresh before another chairman sitting with new set of assessors. Since the anomalies were not cause but the parties, each party shall bear its own cost.

It is so ordered.

G. N. Isaya

JUDGE

30/09/2022

Court:

Judgement delivered today 30/09/2022 in the presence of Projestus Mulokozi, Advocate for the Appellant, also holding brief for Advocate Chamani, Grace Mutoka B/C and Audax Vedasto, Judge's Law Assistant.

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