

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

**LAND CASE APPEAL No. 37 OF 2021**

*(Arising from Application No.62 of 2019 of District Land and Housing Tribunal of Muleba at Muleba)*

**HENERICO BAISI ..... APPELLANT**

**VERSUS**

**ABBAS OMARY .....1<sup>ST</sup> RESPONDENT**

**ALHAJI AHAMADA KAHUNGU ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Date of Last Order 8.2.2022

Date of Judgment: 25.2.2022

**A.E Mwipopo, J.**

Henerico Baisi, the appellant herein, has appealed to this Court against the decision of the Muleba District Land and Housing Tribunal for dismissing Application No. 62 of 2019. The appellant instituted the said application in District Land and Housing Tribunal against Abbas Omary and Alhaj Ahamada Kaungu who are respondents herein for trespassing in the suitland and prayed for an order restraining the respondents and their agents from interfering and trespassing in the suit land.

Briefly, the facts which lead to the current appeal is that appellant sued the respondents one Abbas Omary and Alhaji Ahamada Kahungu in

Application No.62 of 2019 over a piece of land located at Kishogo Hamlet and Nshamba Village within Muleba District. The appellant claims to be the lawful owner of the suit premises by virtue of purchasing it from the 1<sup>st</sup> respondent in 2001. The appellant said that he has been using the land in dispute for 18 years before he was told to vacate following the decision of Bukoba District Land and Housing Tribunal in Application No. 235 of 2012. The appellant was not a party to the suit between the respondents in Land Application No.235 of 2012 at the District Land and Housing Tribunal for Bukoba. The appellant come across the execution letter which intended to execute the District Land and Housing Tribunal's order in the disputed land. And through that letter the appellant realised that in the said Land Application No.235 of 2012, the 1<sup>st</sup> respondent was the judgment debtor while the 2<sup>nd</sup> respondent was the decree holder. The Muleba District Land and Housing Tribunal dismissed the appellant's Application for wants of merits.

Appellant was not satisfied with the decision of the Muleba District Land and Housing Tribunal and he appealed against it. The appellant raised five grounds of appeal in his memorandum of Appeal. The said grounds of appeal are as provided hereunder:

- 1. That, the Trial Chairman of the Tribunal wilfully misdirected himself in law and on facts for failure to rule in favour of the appellant who proved ownership of the suit land by documentary evidence which was tendered and received in evidence without any objection from the Respondents.*

- 2. The, the Trial Chairman of the Tribunal grossly erred in law and on facts to decide the case contrary to the evidence on records which proved the case in favour of the appellant as required by law.*
- 3. That, the trial chairman of the tribunal grossly erred in law and on facts for failure to evaluate the evidence on record which had weight on the part of the appellant hence reaching on an erroneous decision defeating the ends of justice.*
- 4. That, the Trial Chairman of the Tribunal grossly erred in law and on facts for failure to consider the Appellants evidence without any reasonable justification and deciding in favour of the Respondents who totally failed to prove their case as required by law, instead relied on mere words that were concocted and fabricated.*
- 5. That, the Trial Chairman of the Tribunal having received the evidence from the parties and their witnesses that the appellant bought house from the 1<sup>st</sup> Respondent, hence, erred in law and on facts to hold in favour of the Respondents that the appellant only purchased a house and not a land, thus abrogating the Cardinal Principle of law that whatever is attached to land is part of the Land.*

At the hearing of this appeal, both parties were represented by Advocates. Mr. Frank John, Advocate, appeared for the appellant, whereas, Mr. Ibrahim Mswadick, Advocated, represented both respondents.

Mr. Frank John, Advocate, addressed court where he jointly submitted on all grounds of appeal and they prayed for the Court to re – asses and re – evaluate the evidence in records and come with clear findings. He said that the appellant discharged his duty under Section 100 of the Evidence Act, CAP 6, R.E. 2019, since he proved the ownership over the disputed land by the sale

agreement which was admitted as Exhibit - P1 at the trial District Land and Housing Tribunal which was supported by the testimony of PW1, PW2, PW3, PW4 and PW5. The counsel argued that the evidence in records proved that his client brought the said disputed land from the 1<sup>st</sup> Respondent. He wondered how the District Land and Housing Tribunal failed to evaluate all this evidence and end on declared the 2<sup>nd</sup> respondent as the lawful owner of the disputed land. To support his point he cited the case of **Hemed Said v. Mohamed Mbilu** [1994] T.L.R 113.

In the reply, Mr. Mswadick Ibrahim, an Advocate who appeared for the respondent, put the blame on the shoulder of the appellant that he failed to follow the proper procedure while acquired the said disputed land. He argued that the appellant neglected to involve the Village Authority while buying the said land in dispute and the alleged sale agreement was not witnessed by the relevant authority. In support of his point, the counsel cited section 147 (1) of the Local Government District Authority Act, Cap. , R.E 2019, and the case of **Pruchelia John v. Wilbard Wilson and Another**, Land Case Appeal No.64 of 2019, High Court Bukoba District Registry, at page 8, where the High court was of the opinion that the villager should not be allowed to dispose of his land property without the approval of the village council. He also cited the case of **Bakari Mhando Swaga v. Mzee Mohamed Bakari Shehikindo and 3 others**, Civil Appeal No.389 of 2019, CAT at Tanga, (Unreported); and the case of **Sofia Hassan v. Abdu Athumani Kinumi**, Misc. Land Appeal No.66 of

2018, High Court Bukoba District Registry, (unreported), where at page 5 of the judgment, it was held that the sale agreement has to be approved by the village council, failure renders the disposition unlawful. He argued that the District Land and Housing Tribunal judgment was proper and prays for this appeal to be dismissed with cost.

From submissions and the evidence available in the record, the Court is called upon to determine whether the appeal has merits.

The Court observed upon perusal of the records of the trial Tribunal together with its judgment in Application No.62 of 2019 between the parties herein that the issue of ownership of the land in dispute has already been determined on merits by the District Land and Housing Tribunal for Kagera at Bukoba in Application No.235 of 2012. Since, this is the issue of jurisdiction of the trial District Land and Housing Tribunal to determine the issue of ownership of the land in dispute, I decided to look at the decision of the trial Tribunal on its jurisdiction to determine the matter before determining the available grounds of appeal.

The facts of the matter is that the 2<sup>nd</sup> Respondent sued the 1<sup>st</sup> Respondent herein for trespassing and constructing a house in the suitland in Application No. 235 of 2012 in the Bukoba District Land and Housing Tribunal. As the application was not opposed by the 1<sup>st</sup> Respondent, the Bukoba District Land and Housing Tribunal granted the application and declared the 2<sup>nd</sup> respondent the rightful owner of the suit land. The tribunal also ordered for

vacant possession of the suit land. The appellant who has been occupying the land since 2001 became aware of the decision of the Bukoba District Land and Housing Tribunal upon execution of the decree and he filed Application No. 62 of 2019 at Muleba District Land and Housing Tribunal. The Muleba District Land and Housing Tribunal dismissed the application for want of merits. The Tribunal relied on the judgment of Bukoba District Land and Housing Tribunal in Application No. 235 of 2012 which was tendered as Exhibit P1 to hold that the 2<sup>nd</sup> Respondent has already been declared the rightful owner of the suit land and the said judgment has never been overturned. And the said dispute land has already been handed over to the 2<sup>nd</sup> Respondent herein. The trial Tribunal after perused on the sale agreement - Exhibit P1 and provided its observation where it raised question if the sale agreement is enforceable by law. However, the Muleba District Land and Housing Tribunal did not make findings on the said sale agreement – Exhibit P1.

As a general rule, no court shall try any suit or issue in which the matter in issue has been determined to its finality in a former suit by a competent court. This Court in the case of **Rahma Ally Mjje v. Omary Shante Ngwenya**, Land Appeal No. 265 of 2019, High Court Land Division, at Dar Es Salaam, (Unreported), held at page 6 of the judgment that:-

*"It is trite law that when a matter has been decided to its finality and the rights of parties has been determined; no fresh suit can be brought on*

*the same subject matter for the same cause of action if the matter was between the same parties or people claiming title under the same party.”*

In the present case, the appellant herein filed an application in the Muleba District Land and Housing Tribunal for an order to declare him the owner of the dispute land. It was not proper for the Appellant to lodge a fresh case at the tribunal while the issue of ownership of the disputed land has already been determined by the competent Tribunal. The Bukoba District Land and Housing Tribunal previously in Application No. 235 of 2012 declared 2<sup>nd</sup> Respondent to be the rightful owner of the land in dispute. The said decision has never been overturned by the appellate courts. For the appellant to file an application for determination of the suitland, first the judgement of the District Land and Housing Tribunal declaring the 2<sup>nd</sup> Respondent to be the rightful owner of the land has to be set aside or overturned. The reason is that the ownership of the land in dispute has already been determined by the competent Court on merits. The existence of the Bukoba District Land and Housing Tribunal decision in Application No.235 of 2012 renders the latter application before the Muleba District Land and Housing Tribunal to be incompetent as the Muleba District Land and Housing Tribunal has no jurisdiction to determine the matter. Thus, the Muleba District Land and Housing Tribunal rightly dismissed the application No. 62 of 2019 which was filed by the appellant.

As I found that the Muleba District Land and Housing Tribunal properly dismissed the suit before it for want of jurisdiction to determine the ownership

of the suit land has already been determined by Bukoba District Land and Housing Tribunal in Application No. 235 of 2012 on merits, there is no need to determine the remaining grounds of appeal including the respondents' point that the sale agreement was unlawful. The reason is that the Muleba District Land and Housing Tribunal had no jurisdiction to determine anything concerning the issue of ownership of the land in dispute.

Therefore, the appeal is devoid of merits and it is dismissed. Due to circumstances pertaining to this case, there will be no order as to the cost of the suit and each party has to take care of its own cost.



A.E. Mwipopo.  
**Judge**  
25.02.2022

The Judgment was delivered today, this 25.02.2022 in chamber under the seal of this court in the presence of the Appellant, both respondents, counsel for the appellant and counsel for the Respondent. Right of appeal explained.



A. E. Mwipopo  
**Judge**  
25.02.2022