

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

**AT BUKOBA**

**CONSOLIDATED LAND CASE APPEAL NO. 10 OF 2020 & LAND CASE  
APPEAL NO. 11 OF 2020**

*(Arising from District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 51 of 2017)*

**1. KIKUKU VILLAGE COUNCIL.....1<sup>st</sup> APPELLANT**

**2. JONASTUS SIMON.....2<sup>nd</sup> APPELLANT**

**VERSUS**

**TRYPHONE SELESTIN.....RESPONDENT**

**JUDGMENT**

*Date of Judgment: 22.03.2022*

*Mwenda, J.*

This is a consolidated Appeal of Land Case Appeal No. 10 of 2020 and Land Case Appeal No. 11 of 2020 where by the appellants (Mr. Jonastus Simon and Kikuku Village Council) filed this appeal challenging the decision of the District Land and Housing Tribunal for Muleba in Application No. 51 of 2017. In the said matter the respondent who stood as the applicant was declared the rightful owner of the disputed land.

Being dissatisfied by such a decision they filed this appeal to this court with a total of six (6) grounds of appeal.

When this appeal was scheduled for hearing, Mr. Lameck John the learned counsel appeared on behalf of the respondent, Mr. Muyengi Muyengi the

learned state attorney appeared for the 1<sup>st</sup> Appellant while the 2<sup>nd</sup> Appellant appeared in person without legal representation.

During the hearing of this appeal Mr. Lameck, learned counsel for the respondent, submitted that after going through the proceedings of the District Land and Housing Tribunal he noted some irregularities which are; a change of the Hon. Chairmen and assessor. He submitted that there was transfer of Land Application No. 51 of 2017 from Bukoba District Land and Housing Tribunal to Muleba District Land and Housing Tribunal following the order by Mr. Assey the Hon. Chairman dated 12<sup>th</sup> June 2017. He said before the District Land and Housing Tribunal of Bukoba the said application was partly heard and after the transfer to the District Land and Housing Tribunal at Muleba the Hon chairman proceeded by taking the evidence of AW2 to its finality with the new set of assessors. He further submitted that the change of assessors before the tribunal deprived the assessor's competence to give sound opinion as they did not hear the whole application. He concluded by submitting that what happened vitiates the proceedings as a result it shall be quashed and all orders emanating therefrom should be set aside.

In reply to the submission by the learned counsel for the respondent Mr. Muyengi Muyengi, learned counsel for the 1<sup>st</sup> Appellant submitted that, what happened was contrary to the law and he therefore prayed the proceedings, judgment and decree to be quashed and the parties to remain in their position

they had before filing Civil Application No. 51 of 2017. Also, the 2<sup>nd</sup> Appellant supported the submissions by the learned counsels.

Having gone through the submission by both parties and the proceedings of the District Land and Housing Tribunal this court noted that it is true that with the transfer of Land Application No. 51 of 2017 there was a change of the Hon. Chairmen and assessors. At the commencement of the hearing of the said Application, the case was placed before Mr. Assey the Hon. Chairman and after the transfer the case was placed before Mr. Kitungulu, the Hon. Chairman. Later on, Mr. Banturaki Hon. Chairman took over and proceeded by taking the evidence of AW2 without assigning reasons for such take over. It is trite law that once there is a change of judicial officer then the successor judge, magistrate or chairman must assign reasons for taking over and failure of which vitiates the proceedings. This position has been stated 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)*** where it was held inter alia that;

***"Change of chairpersons without giving reasons, coupled with unexplained change of assessors vitiate the proceedings of District Land and Housing Tribunal."***

Guided by the above position of law this court is of the view that this is serious irregularity omitted by the Hon chairman.

On top of that, the transfer of Land Application No 51 of 2017 led to change of assessors. After the said transfer the Hon chairman took over and proceeded by recording AW2 evidence and proceeded with the hearing to its finality with a new set of assessors. As we have stated earlier, the said application was partly heard by a different set of assessors at Bukoba District Land and Housing Tribunal. With such change, the new set of assessors missed the first part of the hearing. It is then obvious that they did not effectively participate in the proceedings.

It is also trite law that where the trial has been conducted by the aid of assessors they must actively and effectively participate in the proceedings. See the case of ***Edna Adam Kibona vs Absolom Swebe (Sheli) Civil Appeal No. 286 of 2017 Court of Appeal of Tanzania (unreported)***.


To align with the above authority, the said application ought to have started a fresh to enable the assessors appreciate the evidence collected from the beginning to the end.

From the above position as it was rightly submitted by the parties, the proceedings and the judgment of the District Land and Housing Tribunal in Land Application No. 51 of 2017 are tainted with irregularities.


Therefore, this appeal succeeds by quashing the proceedings of the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 51 of 2017 and set aside the judgment and any other order emanating therefrom. Any interested party shall institute a fresh suit before a competent authority.

Since the anomalies and irregularities giving rise to these outcomes was caused by the tribunal's error, this court order each party to bear its own costs.

It is so ordered.

 A.Y Mwenda  
**Judge**  
22.03.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Muyengi Muyengi learned state attorney for the 1<sup>st</sup> Appellant and Mr. Jonastus Simon the 2<sup>nd</sup> Appellant and in the presence of Mr. Lameck Erasto learned counsel for respondent.

 A.Y Mwenda  
**Judge**  
22.03.2022