

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

AT BUKOBA

LAND APPEAL NO. 57 OF 2022

(Arising from the District Land and Housing Tribunal for Karagwe at Kayanga in Application No. 33 of 2017)

ALLY MASHOTO APPELLANT

VERSUS

CHIIZA JONATHAN 1ST RESPONDENT

ABDU TIBYEMPANSHA 2ND RESPONDENT

PHINIAS VENANT 3RD RESPONDENT

JUGDMENT

19th & 22nd November 2023

A.Y. MWENDA, J.

According to the records, Mr. Ally Mashoto (the Appellant) is dissatisfied with the judgment of the District Land and Housing Tribunal for Karagwe at Kayanga in Land Application No. 33 of 2017 which ruled in respondent favor. He has preferred this appeal with four (4) grounds. The said grounds read as follows;

- 1) That the trial tribunal erred in law and fact to find out that appellant never proved purchase of the Suitland.
- 2) That the trial tribunal erred in law and fact to find out that vendors had no good title to pass to appellant.

- 3) That the trial tribunal erred in law when it failed to address appellant's cash TZS 3,000,000/= bonafidely paid to the vendors.
- 4) That the trial tribunal erred in law to give weight to the testimonies of 3rd respondent whom was a mere obstructor of appellant's right on ownership of the Suitland.

When this matter was fixed for hearing both parties attended and the appellant was represented by Mr. Samweli Angelo, learned counsel while the respondents were in person without legal representation.

When he was invited to submit in support of the grounds of appeal, Mr. Samuel submitted that the proceedings of the District Land and Housing Tribunal's proceedings is tainted with illegalities regarding the change of Hon. chairmen and change of assessors without assigning the reasons. Having said so, he prayed to abandon the grounds of appeal in the petition of appeal and focus of the raised legal issue.

According to Mr. Samuel, the records shows that when the issues for determination were framed Hon. Assey, was the chairman assisted by two assessors who are Akwiline and Nzarombi. Further to that he submitted that when the hearing commenced the presiding chairman was Hon. Banturaki who was assisted by a new set of assessors who are Mushashu and Lukuletia. According to the learned counsel, the said changes were effected without

assigning reasons to that effect. On that basis he pointed out that such failure is illegality which vitiates the proceedings. He concluded his submission by praying the proceedings of the District Land and Housing Tribunal to be quashed and any other order emanating therefrom to be set aside. On their part, the respondent supported Mr. Angelo's argument.

That being the summary of the party's submission, the issue for determination before this appeal is whether the proceedings before the District Land and Housing Tribunal is tainted with irregularities.

At the outset it is important to point out that if a suit/case changes hands from one judicial officer to another, the successor judicial officer is bound to give reasons for taking over in order to provide semblance of order and ensure fair trial to the parties. This is not only the requirement of the law but also good practice for the sake of transparency. See JAMES MAKO MAHENDE VS REPUBLIC (SUPRA). This requirement is also prescribed by order XVIII Rule 10(1) of the Civil Procedure Code which reads as follows:

'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”.

As hinted above a magistrate or judge may take over a suit from the stage his predecessor left and in so doing, he/she shall put on record as to why he/she has taken up a case that is partly heard by another.

This position is reflected in the case of THEORBAD KAGANDA VS FR. FORTUNATUS S. BIJURA (administrator of the estate of the late Atony Bijura) LAND APPEAL No. 21 of 2016 (unreported) where this court held that;

“Change of chairpersons without giving reasons, coupled with unexplained change of assessors vitiate 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 in approve the case of MS. GEORGES CENTRE LTD VS THE ATTORNEY GENERAL AND ANOTHER, CIVIL APPEAL NO. 29 of 2016 where 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]

With the above guidance, this court perused the records of the District Land and Housing Tribunal's Application No. 33 of 2017 only to note that the above legal requirement was not complied with when the successor chairman took over the matter from his predecessor. As it was correctly pointed out by Mr. Angelo, this matter was entertained by two Hon. Chairmen. When the issues were framed, Hon. Assey was in charge and was assisted by two Hon. Assessors (Akwiline and Nzarombi). However, when the hearing (trial commenced) Hon. Banturaki took over and was assisted by a new set of assessors who are Mushashu and

Lukuletia. However, while taking over, Hon. Banturaki did not assign reasons for taking over the matter which is fatal.

Again, since the records shows there were two sets of assessors involved but it is not revealed if the new set assessor was availed with the framed issues, then that by itself imply that the new set of assessors which gave their opinion was not fully involved in the hearing. On that basis their opinion missed an important part of the records which is the framed issues.

From the foregoing observation this appeal is allowed, the whole proceedings of the District Land and Housing Tribunal in Application No. 33 of 2017 is nullified and the judgment and any other order emanating from are hereby set aside. Any party wishing to pursue his right may do so by instituting a fresh suit.

Each part shall bear its own costs.

It is so ordered.


A.Y. MWENDA
JUDGE
22.09.2023

This judgment is delivered in chamber under the seal of this court in the presence of Mr. Ally Mashoto the appellant and in the presence of the respondents.




A.Y. MWENDA
JUDGE
22.09.2023