

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND CASE APPEAL NO. 47 OF 2021**

*(Arising from Land Appeal No. 95 of 2018 District Land and Housing Tribunal for Bukoba  
Originating from Civil Case No. 6 of 2017 Kishogo Ward Tribunal)*

**SELESTINE ERNEST..... APPELLANT**

**VERSUS**

**AUGUSTINE PETRO..... RESPONDENT**

**JUDGMENT**

17<sup>th</sup> and 20<sup>th</sup> October, 2023

**BANZI, J.:**

This is a second appeal originating from Kishogo Ward Tribunal (“the trial tribunal”) where the respondent successfully sued the appellant over a piece of land located at Kibona hamlet, within Kishogo village. Aggrieved with that decision, the appellant appealed before the District Land and Housing Tribunal for Bukoba (“the DLHT”) but his appeal was unsuccessful.

The appellant sought and obtained extension of time which resulted into the appeal at hand that was filed on 21<sup>st</sup> June, 2021. The petition of appeal lodged before this Court contained three grounds which for the reasons to be apparent shortly, I shall not reproduce them. The records reveal that, since the inception of this appeal in 2021, there were several

adjournments on the reason of missing original record of the trial tribunal. Despite several orders for calling for record issued by this Court, nothing was retrieved. Eventually, on 22<sup>nd</sup> September, 2023, learned Chairman of the DLHT did swear affidavit explaining that, the original record of the trial tribunal was traced without success.

After receiving the affidavit in question, considering that, the appeal had already become the backlog and the respondent has defaulted appearance, on 29<sup>th</sup> September, 2023, this Court issued the order of service to the respondent by affixing summons on his premise and at the offices of ward and village. The respondent was duly served in compliance with the order and the affidavit of process server was duly filed before this Court.

At the hearing of the appeal on 17<sup>th</sup> October, 2023, the appellant was represented by Mr. Lameck John Erasto, learned counsel whereas, the respondent did not appear. Since he defaulted the appearance despite being duly served, the hearing proceeded *ex-parte* against the respondent. When Mr. Erasto was invited to submit on the way forward in the view of missing record of the trial tribunal, he relied on the case of **Charles Ramadhani v. Republic** [2020] TZCA 1871 TanzLII and prayed for the judgments of trial tribunal and the DLHT to be quashed and decree arising therefrom to be set aside.

I have carefully considered the prayer by Mr. Lameck. It is undisputed that, since the inception of this appeal in 2021, this Court has issued several orders of calling for record of the trial tribunal without success. It is apparent in the light of the affidavit sworn by Mr. Prosper Julian Makwandi, the Chairman of the District Land and Housing Tribunal for Bukoba on 22<sup>nd</sup> September, 2023, that the efforts to trace the missing record in the appeal at hand, have proved futile. The Chairman in paragraphs 6 and 7 of his affidavit deponed that:

*"6. Kwamba baada ya kuletwa jalada hilo la Rufaa tukapokea wito wa Msajili akiamuru kumbukumbu za Baraza la kata kwenye shauri Na. 6/2017 Baraza la kata Kishogo ziletwe.*

*7. Kwa jitihada nilizofanya kwa kushirikiana na watumishi wenzangu, kumbukumbu za masijala zimeonyesha kwamba kumbukumbu za shauri hili zililetwa Baraza la Ardhi na Nyumba la Wilaya ya Bukoba tarehe 11/9/2018 na kupokelewa na Karani aitwae Bi. Evelyne Charles Kamando ambae kwa sasa ni Marehemu. **Juhudi tulizofanya kutafuta jalada hili hazikuzaa matunda.**"*(Emphasis supplied).

It is obvious from the extract above that, the original record of the trial tribunal in respect of Civil Case no. 6 of 2017 before Kishogo Ward Tribunal

is missing and the efforts to trace it proved futile. As it was observed by the Court of Appeal in the cited case of **Charles Ramadhani v. Republic** (*supra*), there is no general rule in our jurisprudence on the way forward when the Court is faced with the problem of missing records of the lower courts. In some case like **Robert Madololyo v. Republic**, Criminal Appeal No. 486 of 2015 CAT (unreported), an order of reconstruction of the record was considered as viable means of remedying the situation. However, in other cases, the order of re-trial was considered to be appropriate where reconstruction of the record is neither feasible nor possible.

In the matter at hand, since the affidavit of the Chairman proved that the record of the trial tribunal is nowhere to be traced, it is my considered view that, an order of reconstruction in order to determine this appeal on merit will not be feasible considering that, the trial tribunal in question is no longer functioning after being closed. Likewise, with amendment of section 13 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] ("the Land Disputes Courts Act") through section 45 of the Written Laws (Miscellaneous Amendments) (No. 3) Act 2021, an order of re-trial will not be appropriate because the ward tribunals are ousted with jurisdiction to adjudicate land disputes.

For those reasons, I find it prudent to invoke revisional powers under section 43 (1) (b) of the Land Disputes Courts Act to nullify the proceedings, quash the judgments and set aside the orders and decree of the trial tribunal and the DLHT. Any party who is still interested to pursue his right may file a fresh suit according to the current legal procedure of adjudicating land disputes. Under the prevailing circumstances, I make no orders as to costs. It is accordingly ordered.



**I. K. BANZI**  
**JUDGE**  
**20/10/2023**

Delivered this 20<sup>th</sup> day of October, 2023 in the presence of the appellant in person and in the absence of the respondent.



**I. K. BANZI**  
**JUDGE**  
**20/10/2023**