

UNITED REPUBLIC OF TANZANIA
JUDICIARY
HIGH COURT OF TANZANIA
BUKOBA SUB REGISTRY
AT BUKOBA
LAND APPEAL NO. 26 OF 2023

*(Arising from Appeal No. 78 of 2021 of Karagwe District Land & Housing Tribunal and Original
Land Case No. 66 of 2021 of Isingiro Ward Tribunal)*

PANCRAS BONIPHACEAPPELLANT

VERSUS

REVELIAN GREGORY1ST RESPONDENT

CHRISTOPHER GREGORY.....2ND RESPONDENT

VIANUS GREGORY.....3RD RESPONDENT

CHRIZOSTOM GREGORY.....4TH RESPONDENT

RULING OF THE COURT

Date of last Order: 28/02/2024

Date of Ruling: 15/03/2024

BEFORE: G.P. MALATA, J

Aggrieved by decision of the District Land and Housing Tribunal for Karagwe in
land Appeal No. 78 of 2021 originating from land case No. 66 of 2021 of Isingiro

Ward Tribunal, the appellant appealed to this court in **Land Appeal No. 26 of 2023**.

On 28/02/2024 the appeal came for hearing and the parties appeared represented. Mr. Frank Kalori John learned counsel appeared for appellant whereas Mr. Joseph Bitakwate learned counsel appeared for the respondents.

At the beginning, this court *suo motto* raised a point of law on whether there is proper appeal emanating from proper proceedings of Isingiro Ward Tribunal in Civil Case No. 66 of 2021. The reason for so doing is that, the record shows that, before the said Ward Tribunal there was no hearing of the case but just tabling of unsworn statement by persons brought by the claimant and respondent who were later subjected to interview by the member of the Tribunal.

In short, the court noted that legally that, there was no witness who appeared in court and testified for and against the dispute, thence no valid decision arising therefrom. In view thereof, this Court invited the parties to address on said *suo motto* raised point of law.

Mr. Frank Kalori John learned counsel submitted that, the proceedings in Civil Case No. 66 of 2021 of the Isingiro Ward Tribunal indicates that, the parties and their witnesses did not testify but just tabled unsworn statements and interviewed on the same. The adopted procedure contravened evidence law

which requires testimonies by witnesses to be taken under oath. To cement the position, he referred this court to the case **Gabriel Boniface Nkakalisi vs National Social Security Fund**, Civil No. 237 of 2021 CAT Dodoma, at Pages 9 and 10, the Court;

"The consequence of not administering Oaths or affirmation accepted before giving evidence vitiates the proceeding and prejudices the parties case.

We hereby invoke the powers bestowed on us in terms of section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R.E. 2019 and nullify the proceedings, quash the CMA and High Court decisions, set aside the CMA's award, and the High Court order which revised the award and no order as to costs."

In that context, the appeal emanates from a nullity proceeding as such it needs to be nullified.

In the event therefore, this Court be pleased to nullify proceeding in Civil Case No. 66 of 2021 of the Isingiro Ward Tribunal, and Civil Appeal No. 78 of 2021 of Karagwe DLHT for being nullity. Finally, since the present appeal emanates from a nullity proceeding, we opine that it be dismissed for being a nullity, we pray that each party to bear its own costs.

Mr. Joseph Bitakwate learned counsel for the respondent just subscribed to the submission by Mr. Frank Kalori John learned counsel for the appellant.

Having gone through both counsels' submissions, I am inclined to agree with them on the legal position they referred to. It is evident that, what transpired before Isingiro Ward Tribunal was not evidence but mere statement. Section 13 (1) of the Ward Tribunal Act, Cap.206 R.E.2002 provides that;

*"On the date specified in the summons the parties shall, subject to sub-section (3) appear in person before the Tribunal, **give their evidence and answer all questions put to them by any member of the Tribunal.**"*

Section 13 (3) of the same Act provides;

*"Where the complainant or the person complained against is a child below eighteen years of age, or is a person who for any sufficient cause cannot adequately put his case or defend himself, that person may appear before the Tribunal together with his parent, guardian, relative or friend who may, subject to the procedure adopted by the Tribunal, assist him in the **examination or cross examination of witnesses or the making of submissions before the Tribunal.**"*

The word used in section 13 referred herein above is "**give their evidence**" and "**examination or cross examination of witnesses**". In my view, court and tribunals decide cases based on evidence and law. The evidence comes from witnesses who give their testimonies after getting sworn or affirmed to tell the truth and not lies. This being a Tribunal of which its decision is appealable up to

the court of appeal, it cannot be said it decides cases just based on unsworn/unaffirmed statements or mere statement of which the maker is not even made accountable for. Such statement cannot in law be said to be evidence but mere statement like the one given by anybody in town including bibulous men at local brew or anywhere. Evidence adduced in court or tribunal makes the author accountable to it as it is given under oath as opposed to unsworn statement.

Courts and tribunals while discharging the mandates under Article 107A (1) of the Constitution of the United Republic of Tanzania, 1977 performs the sacred and sensitive functions for health of the people and national stability of United Republic of Tanzania.

"Mamlaka yenye kauli ya mwisho ya utoaji haki katika Jamhuri ya Muungano itakuwa ni Mahakama."

The above Constitutional function cannot be achieved by just relying on mere statement but cogent evidence satisfying the court/tribunal that a particular party has right.

On the strength of the above, this court had nothing to state more but just to abide to the court of appeal position given the case of **Gabriel Boniface Nkakalisi vs National Social Security Fund**.

In the event therefore, this Court hereby invoke its revisional mandates under section 43 (1) (b) of the Land Disputes Courts Act, Cap. 216 R.E 2019 and nullify

the Proceeding of Ward and DLHT based on the above position. As the present appeal has no leg to stand on, it is accordingly dismissed. Each part to bear its own costs.

IT IS SO ORDERED.

DATED at **BUKOBA** this 15th March, 2024.


G.P. MALATA
JUDGE
15/03/2024

RULING delivered at **BUKOBA** this 15th March, 2024.


G.P. MALATA
JUDGE
15/03/2024