

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 27 OF 2019**

(Arising from Land Application No. 32 of 2015 before Mkuranga District Land and Housing Tribunal dated 29<sup>th</sup> January 2019 by Hon. R. MWAKIBUJA, Chairman)

**OMARY FUNDI KONDO HUMBWAGA**

(Administrator of the late Fundi Kondo) ..... **APPELLANT**

**VERSUS**

**SAID MWINJUMA HUMBWAGA**..... **1<sup>ST</sup> RESPONDENT**

**NOEL PAULO NDIKUMIGWA**..... **2<sup>ND</sup> RESPONDENT**

*Last Order: 09/04/2021*

*Judgement date: 11/06/2021*

**J U D G M E N T**

**MANGO, J**

The Appellant instituted Land Application No. 32 of 2015 before the District and Housing Tribunal for Mkuranga against the respondents claiming ownership of a piece of land located at Kamegele Hamlet, Vikindu Village Mkuranga District in Pwani Region. He alleged that the suit land forms part of the estate of the late Fundi Kondo and that the first respondent sold the suit land to the second respondent without any legal authority. The trial tribunal ruled in favour of the Respondents. Aggrieved by the decision of

the trial tribunal the Appellant preferred this Appeal on the following grounds: -

- 1. That, there were no reasons whatsoever advanced either by the successor chairman or predecessor chairman on the transfer of case from one chairman to another**
- 2. That, the Honorable chairman erred in law and fact for not considering and according weight to exhibit P1 which was tendered by the appellant**
- 3. That, the Honourable chairman erred in law and in fact for admitting as evidence exhibits D1, D2 and D3 which were tendered contrary to the provisions of the law**
- 4. That, the Honourable chairman erred in law and in fact for relying on evidence of DW4 and DW5 which was contrary to evidence of DW1**
- 5. That, the Honourable Chairman erred in law and fact for relying on the Record of Village Government which was neither tendered in court nor admitted**
- 6. That, the Honourable Chairman erred in law and fact for finding that the late Fundi Kondo gave disputed land to the first respondent's aunt, the late Hadija Humbwaga contrary to the evidence adduced**
- 7. That, the Honourable chairman erred in law and fact for relying on insufficient, inconsistency and contradictory evidence of the first respondent witness.**

The Appellant was represented by Mr. Godfrey Adilila, learned advocate while the Respondents had no legal representation. The appeal was argued by way of written submissions

Submitting on the first ground of Appeal, the Appellant's counsel argued that their case was adjudicated by three different chairmen, unfortunately, no reasons whatsoever has been advanced or communicated to the parties as to what caused the alleged transfer of the case from one chairman to another. He pointed out that the case was first handled by Hon. R.L CHENYA then it was reassigned to Hon. A. R. KIRUMBI and finally, by R. MWAKIBUJA. Citing the case of **OYSTEBAV VILLAS LIMITED VERSUS KINONDONI MUNICIPAL COUNCIL**, Civil Appeal No. 173 of 2017, Court of Appeal of Tanzania at Dar es salaam, he argued that it is mandatory to assign reasons for transfer of the case from one chairman to another and failure to do renders proceedings nullity.

In their reply submission the Respondents did not dispute that their case was adjudicated by more than one chairman and that no reason for the said change has ever been registered in the proceedings of the trial tribunal. They argued further that such transfer did not affect proper recording of the proceedings and adjudication of the case. On their part, such transfer did not occasion failure of justice to the parties.

In his rejoinder, counsel for the Appellant reiterated his submission in chief and argued that one cannot over emphasize the importance of stating reasons for transfer of the case from one chairman to another especially in this case which has been handled by more than two chairmen.



From the submissions by both parties it is not disputed that the case was adjudicated by more than one chairman. Court record indicates that the case was adjudicated first by Hon R.L Chenya from 30<sup>th</sup> October 2015 to 18<sup>th</sup> December 2015. Hon. Chenya handled the matter at its very preliminary stages. He only issued an order that the Respondents should file their written statement of defence and scheduled the matter for mention on 18<sup>th</sup> March 2016.

On 18<sup>th</sup> March 2016 Hon. A.R Kirumbi took over adjudication of the case from Hon. Chenya. No reason for the takeover has been recorded in the case file. Hon. Kirumbi proceeded with the matter until closure of the Applicant's case. On 20<sup>th</sup> February 2017, Hon. R. Mwakibuja took over adjudication of the case by hearing defence case and finalising the matter up to judgement stage. Court record does not establish reasons for re-assignment of the case from Hon. Kirumbi to Hon. Mwakibuja.

The law, Order XVIII Rule 10(1) of the Civil Procedure Code, [Cap 33 R.E 2019] provides that;

*"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 afore going 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."*

Although the cited provision does not indicate expressly the requirement to record reasons for transfer of the case from one Magistrate to another, I




agree with the appellant submission that it is necessary to record reasons for re assignment of cases and the same need to be communicated to the parties as reflected in the case of **Oystebay Villas Limited** cited by the Appellant. The importance of assigning reasons for transfer of the case from one chairman to another has been stated clearly by my brother Kakolaki, J. in the case of **SAADA JANUARY NYAMBIBO VERSUS DEBORA JANUARY NYAMBIBO** in which he referred to the decision of the Court of Appeal of Tanzania in the case of **M/S GEORGE CENTRE LIMITED VERSUS THE HONOURABLE ATTORNEY GENERAL**, Civil Appeal No. 29 of 2016 where the Court of Appeal reasoning on the requirements of Order XVIII Rule 10(1) of the Civil Procedure Code,[Cap 33 R. E. 2002] it held that:-

*"The general premise that can be gathered from the above provision is that, once the trial of a case has begun before one judicial officer that officer has to bring it to completion unless for some reason, 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 the case that is partly heard by another. There are a number of reasons why it is important that a trial started by one judicial officer be completed by the same judicial officer unless it is not practicable to do so. For one thing the one who sees and hears the witnesses is in the best position to assess the witnesses' credibility. Credibility of witnesses which has to be assessed is very crucial in the determination of any case before a court of law. Furthermore, integrity of judicial proceedings hinges on transparency. Where there is no transparency justice may be compromised."*

In the appeal at hand, the case was partly heard by Hon. Kirumbi before re assignment to Hon. Mwakibuja. As per the decision of the Court of Appeal cited above, reasons for reassignment are mostly relevant when the case is partly heard. In that regard Hon. Mwakibuja was duty bound to give reasons for taking over adjudication of the case from Hon. Kirumbi. Failure to state reasons for such transfer suggests that the case file has never been reassigned to any other chairman and that other chairmen had no jurisdiction to adjudicate the case for want of proper assignment. This makes all proceedings that continued without proper reassignment to be nullity. Thus, the first ground of Appeal is hereby sustained.

For that reason, I hereby invoke revisionary powers of this court to quash proceedings that were done before Hon. Mwakibuja, judgement and any order issued by Hon. Mwakibuja in Application No. 32 of 2015 before the District Land and Housing Tribunal for Mkuranga for want of jurisdiction. The court orders that the matter be placed before Hon. Kirumbi for continuation of trial from where he ended. Should he be prevented for any reason to proceed with the trial, reasons for such failure be recorded and the case file be properly reassigned to another chairman for continuation of the trial.

Given circumstances of this case, I award no costs.

  
**Z. D. MANGO**  
**JUDGE**  
**11/06/2021**

