

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO. 83 OF 2021

*(Arising from Land Appeal No.225 of 2020 in the District Land and Housing  
tribunal for Mara at Musoma)*

Between

DAMIANUS OKUNI..... APPELLANT

Versus

JOHN KAMBONA ..... RESPONDENT

JUDGMENT

4<sup>th</sup> & 28<sup>th</sup> February, 2022

A. A. MBAGWA, J.

The appellant herein successfully sued the respondent over a piece of land located at Masinoni village in Bugwema ward. The matter was heard and determined by Bugwema Ward Tribunal herein to be referred as the trial Tribunal. Upon hearing the evidence of both parties along with visitation at the *locus in quo*, the trial Tribunal adjudged in favour of the appellant. The trial Tribunal was satisfied that the appellant DAMIANUS OKUNI is the lawful owner of the suit premises as he inherited the same from his later father JOSEPH OKUNI who was allocated the said piece of land by the Masinoni Village Counsel in 1974.



Aggrieved by the decision of the trial Tribunal, the respondent JOHN KAMBONA appealed to the District Land and Housing Tribunal for Mara in Land Appeal No. 225 of 2020. The appellate Tribunal overturned the decision of the trial Tribunal. Consequently, it declared the respondent a lawful owner of the suit premises and awarded him costs of appeal.

The appellant was not satisfied with the decision of the District Land and Housing Tribunal (appellate Tribunal) hence appealed to this Court.

When the matter was called on for hearing, the appellant was represented by Emmanuel Gervas, learned advocate whereas the respondent appeared in person to contest the appeal.

Mr. Emmanuel Gervas forcefully submitted on grounds of appeal which, for apparent reasons, I will not reproduce. Conversely, the respondent, resisted the appeal saying that the decision of the appellate Tribunal was right.

However, in the course of navigating through the record of appeal, I noticed that the Ward Tribunal (trial Tribunal) which heard the matter at the first instance was constituted of five members to wit, three men and two women as follows: -

- i) Thomas Mauna (male)
- ii) Regina Mwita (female)
- iii) Maraba Masanyiwa (male)
- iv) Musiranga Manyama (male)
- v) Gladis Pius (female)

Alive to decision of Court of Appeal in **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora and the legal requirements under section 11 of the Land Disputes Court Act [Cap. 216 R.E. 2019], I summoned the parties on 28/02/2022 to address the Court on the composition of the Ward Tribunal.

Mr. Emmanuel Gervas, learned counsel for the appellant was brief and straight that after going through the decision of the Court of Appeal in **Edward Kubingwa vs Matrida A. Pima**, (Supra) he was of considered view that the trial Tribunal was not duly constituted when it heard and determined the case because the quorum lacked the mandatory number of three women. Similarly, the respondent was emphatic that only two women namely, Regina Mwita and Gladis Pius formed part of the quorum.

Since the determination of this appeal lies on the issue whether the Ward Tribunal was properly constituted, I find it relevant to reproduce the provisions of section 11 of the Land Disputes Court Act which reads;



**'Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act'.**

From the foregoing provision, it is common cause that the Ward Tribunal should be composed of not less than four members but at least three of them must women. According the record of appeal, the Ward Tribunal was constituted by five members namely, Thomas Mauna, Reginal Mwita, Maraba Masanywa, Musiranga Manyama and Gradis Pius. However, of all five members only two Regina Mwita and Gladis Pius were women. Apparently, this was in violation of the mandatory requirements of section 11 of the Land Deputes Courts Act.

It is now a settled law that proceedings conducted before an improperly constituted Tribunal are a nullity. See the case of **Edward Kubingwa vs Matrida A. Pima, (Supra)** and **Adelina Koku Anifa & Another vs Byarugaba Alex**, Civil Appeal No. 46 of 2019, CAT at Bukoba.

Since the trial Tribunal was not properly constituted, it follows that the proceedings before it and those before the District Land and Housing Tribunal were a nullity. As such, I quash both proceedings before the Ward

Tribunal and District Land and Housing Tribunal and consequently set aside the resultant judgments of the two Tribunals.

Ordinarily, I would have ordered a trial before the Ward Tribunal. However, through the changes brought via sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, the Ward Tribunal does no longer have powers to determine land matters. See also **Edward Kubingwa vs Matrida A. Pima** (supra).

In the circumstances, I hereby hold that a party who still wishes to pursue the matter, may institute the suit afresh as per the current procedures and law.

As the issue upon which this appeal has been determined was raised by the Court *suo motu*, I make no orders as to costs.

It is so ordered.

The right to appeal has been duly explained.



  
**A. A. Mbagwa**

**JUDGE**

**28/02/2022**

**Court:** This judgment has been delivered in the presence of Emmanuel Gervas, learned Advocate for the Appellant and the respondent via teleconference this 28<sup>th</sup> day of February, 2022.



  
**A. A. Mbagwa**

**JUDGE**

**28/02/2022**