

**IN THE COURT OF APPEAL OF TANZANIA
AT MOROGORO**

(CORAM: JUMA, C.J., MWARIJA, J.A. And MASHAKA, J.A.)

CIVIL APPEAL NO. 279 OF 2020

ZAHARA MINGI..... APPELLANT

VERSUS

ATHUMANI MANGAPI..... RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Dar es Salaam)**

(Mkeha, J.)

dated the 23rd day of May, 2019

in

Land Appeal No. 06 of 2018

JUDGMENT OF THE COURT

24th April & 2nd May, 2023

MASHAKA, J.A.:

The respondent Athumani Mangapi had filed a suit before the Lumemo Ward Tribunal (the Ward Tribunal) against the appellant Zahara Mingi claiming that she trespassed in his piece of land measuring three and a half acres (the disputed land) situated at Ihanga area, Lumemo Ward in the District of Ifakara, Morogoro Region. While the appellant alleged that the disputed land belonged to her late father, Haridi Mingi who had obtained it by clearing a bush land way back in 1970. The Ward Tribunal declared the respondent the lawful owner.

Being aggrieved, the appellant lodged an appeal to the District Land and Housing Tribunal for Kilombero at Ifakara which upheld the decision of the trial Tribunal. Still dissatisfied, she unsuccessfully appealed to the High Court.

Still undaunted, the appellant first applied for, and obtained a certificate from the High Court certifying that there is point of law involved in the appeal under section 47 (2) of the Land Disputes Act, with the intention of challenging the proceedings of the trial Tribunal and the High Court on two points of law to be determined by the Court.

The appellant in the memorandum of appeal raised two grounds of appeal as follows:

- 1. That the High Court erred in law by its failure to hold that the trial Tribunal had no jurisdiction to determine the matter; and*
- 2. That the High Court erred in law to hold that the trial Tribunal was improperly constituted, that is without disclosing the presiding members.*

The appellant and the respondent filed written submissions in terms of rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules).

During hearing of the appeal, both the parties were present in person and unrepresented by learned counsel.

Submitting in support of the appeal, the appellant prayed to adopt the memorandum of appeal and her written submission. In her written submission, commencing with ground one, she argued that the tribunal which tried the land dispute appears to be a new organ mandated under the law to adjudicate on land matters as the record shows that the parties' dispute was before an organ identifying itself as "*Baraza la Migogoro ya Ardhi Kata ya Lumemd'*" as seen at pages 4 to 27 of the record of appeal. The appellant questioned the legal mandate of this organ to resolve land disputes and stated that the said "*Baraza la Migogoro ya Ardhi Kata ya Lumemd'*" had no jurisdiction to settle disputes. She further argued that the legally recognized organ under section 3 of the Land Disputes Courts' Act Cap 216 is the Ward Tribunal and not the "*Baraza la Migogoro ya Ardhi Kata ya Lumemd'*". Thus, the trial Tribunal had no jurisdiction to determine the land dispute between parties, she concluded.

On the second ground, that the trial Tribunal was not properly constituted for failing to disclose the presiding members, it was her contention that when it delivered the judgment, the members present were ASUMINI MGWALU, ISSA MASASI, HAMISI LIGANGA and HAMISA MHANGAMWELU. She contended that ASUMINI MGWALU had never appeared at any hearing of the dispute in any way but fully participated in the delivery of the judgment. She argued that such a

member cannot be said to have understood what transpired during trial and she cannot be in a proper position to decide on the matter as she had no knowledge. She claimed that the involvement of ASUMINI MGWALU greatly prejudiced her as she was condemned to have no right over the suit land.

She implored the Court to consider her grounds and urged us to nullify the proceedings of the trial Tribunal and that of the first appellate court together with the judgment and in lieu thereof, grant her the right of ownership of the disputed land.

In reply opposing the appeal, the respondent implored the Court to consider his reply to the appellant's written submission. In his written submission, on ground one of complaint, he agreed that the trial Tribunal is established under the law as submitted and styled by the name Ward Tribunal. In the case at hand, he admitted that there was a slight mistake in mentioning the presiding organ as "*Baraza la Migogoro ya Ardhi Kata ya Lumemo*" instead of Lumemo Ward Tribunal. He argued that the trial Tribunal reached its decision after considering the evidence adduced and the documents tendered before it during the hearing of the case. Thus, it was his submission that the slight mistake of not citing the proper title of the presiding organ cannot vitiate the whole proceedings referring to Article 107 A (2) (e) of the Constitution of the

United Republic of Tanzania which emphasizes on the Judiciary to dispense justice without being tied up with technicalities which may obstruct dispensation of justice.

On ground two, the respondent submitted that the trial Tribunal was properly constituted as it appears in the proceedings. Concluding his submission, he implored the Court to dismiss the appeal with costs.

In rejoinder, the appellant submitted that the respondent agreed with her contention but quickly pointed out that it was a slight mistake seeking refuge under Article 107 A (2) (e) of the Constitution. She maintained that the jurisdiction of a court is of paramount importance and dispensation of justice should be done by competent courts.

On the second complaint, she stated that the respondent offered a general denial. Thus, she beseeched the Court to allow the appeal with costs.

Having heard submissions by both parties, the issue for determination is whether the trial Tribunal was vested with jurisdiction to determine the land dispute.

Commencing with ground one, that the trial Tribunal was termed as "Baraza la Migogoro ya Ardhi Kata", as it appears at page 4 of the record of

appeal, it so appears. As correctly submitted by the respondent such omission is minor and cannot vitiate the whole proceedings as even the copy of judgment by the trial Tribunal exhibits an official stamp of the Chairman of the Ward Tribunal, Lumemo Ward. We find that the determination of the land dispute was conducted by a properly constituted Ward Tribunal and had maintained the composition of members as is prescribed under section 11 of the Land Disputes Courts Act, which states:

"11. 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."

In the case of **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 (unreported) the Court held that:

"With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2018 [ACT No.8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts

Act 13 should be given more prominence to cut back on over-reliance on procedural technicalities”.

Section 45 provides:

*"45. - No decision or order of a Ward Tribunal or District Land and Housing Tribunal **shall be reversed or altered on appeal or revision on account of any error or omission or irregularity in the proceedings before or during the hearing** or in such decision or order or on account of the improper admission or rejection of any evidence **unless such error or omission or irregularity** or improper admission or rejection of evidence **has in fact occasioned a failure of justice.**" [Emphasis added].*

We emphasize our stance in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 (supra) that the Court should not read additional procedural technicalities into the simple and accessible way Ward Tribunals in Tanzania conduct their daily businesses. Therefore, ground one is devoid of merit and is dismissed.

Moving to ground two, it was whether the trial Tribunal was properly constituted by not disclosing the names of the presiding members. The composition of the Ward Tribunal which we have been referring all along as the

trial tribunal is a matter of law. As alluded to earlier under section 11 of the Land Disputes Court Act and section 4 (1) (a) of the Ward Tribunal Act provides as follows: -

*“Every Tribunal shall consist of **not less than four nor more than eight other members** elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner.” [Emphasis added].*

As gleaned at page 4 of the record, when hearing began on 26th July, 2016 four members were recorded in attendance namely HABIBA KANJINULA, HAMISI LIGANGA, HAMISA MHANGAMWELU and ISSA MASASI according to the law. Hence properly constituted for the hearing to proceed. At page 22 of the record, it is shown that on 31st August, 2016 the following members HABIBA KANJINULA, HAMISA MHANGAMWELU, HAMISI LIGANGA, ISSA MASASI and ASUMINI MGWALU were in attendance when the trial Tribunal visited the disputed land where witnesses for both parties adduced evidence concerning the disputed land, the acres of land involved and neighbours bordering the said area. During delivery of the verdict, the members in attendance on 08th November, 2016 were ASUMINI MGWALU, ISSA MASASI, HAMISI LIGANGA and HAMISA MHANGAMWELU. These were the minimum four members required by section 4 (1) (a) of the Ward Tribunal Act.

In the light of the above cited provision, the composition of the Ward Tribunal at all times during hearing was not less than four members and not more than eight. We find that the trial Tribunal was properly constituted as explained. The appellant raised in her written submission that the mandatory coram was lacking and the presiding members present on 05/08/2016, 12/08/2016 and 19/08/2016 were not disclosed. As gleaned from pages 7 to 19 of the record of appeal, though the coram is missing, the proceedings reflects that the presiding members were present because they asked the witnesses questions. Among the members, specifically Asumini Mgwalu as complained by the appellant, visited the disputed land, and her attendance was recorded on 20/08/2016. She participated in the trial, hence present on the date of verdict.

Section 13 of the Land Disputes Courts Act, underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements. See **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 (*supra*). Under such circumstances, the ward tribunals are not bound with technicalities. That harmonious spirit cannot be attained if this Court accedes to the prayer of the appellant to prescribe judicially that the record of proceedings

should be vitiated for the slight mistake made to the title of the Ward Tribunal and lacking a coram disclosing the names of members who were present during the trial. In the circumstances, ground two lacks merit and we dismiss it.

In the light of the foregoing, this appeal has no merit and it is dismissed in its entirety, with costs.

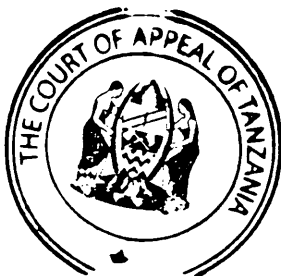
DATED at MOROGORO this 28th day of April, 2023.


I. H. JUMA
CHIEF JUSTICE

A. G. MWARIJA
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

This Judgment delivered this 2nd day of May, 2023 in the presence of appellant and the respondent, both appeared in person via Video Link from Ifakara/ Kilombero District Court, is hereby certified as a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL