

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MBEYA

MISCELLANEOUS LAND CASE APPEAL NO. 48 OF 2012

(From the Decision of the District Land Housing Tribunal of Rungwe District at Rungwe in Land Case Appeal No. 26 of 2012 and Original Ward Tribunal of LUFILYO Ward in Application No. 4 of 2012)

STABELI LUBANGE.....APPELLANT

VERSUS

ENITA NGIGILISI.....RESPONDENT

12/06/2014 & 18/06/2014

JUDGMENT

A.F. NGWALA, J.

This is an appeal by Stabeli Lubange against the Judgment and Decree of the District Land and Housing Tribunal of Rungwe, where the Appellant had instituted an appeal against the decision of Lufilyo Ward Tribunal in Case No. 4 of 2011. That Appellate tribunal declared the Respondent Enita Lubange the lawful owner of the suit land as declared by the said Ward Tribunal. It further dismissed the appeal with costs and confirmed the decision of the Lufilyo Ward Tribunal.

The Appellant was aggrieved, hence this appeal to this court. Both the parties in this appeal who are old ailing women are represented by their respective children. The appellate tribunal allowed the parties to be represented by their respective children in accordance with the provisions of Section 30 of the Land Disputes Courts Act,

CAP 216 R.E. 2002. The Appellants Appeal was argued by her son Mbarikiwa Mwalubage, while Rosemary Kyusa the daughter of the Respondent argued the appeal for her mother.

Both the representatives of the parties in this appeal are laymen, who mainly argued for and against the appeal. Upon perusing the records of the subordinate Courts to this Court as established under the provisions of Section 3(1) and (2) of the Land Disputes Courts Act, CAP 216 R.E. 2002, I have noted that the proceedings in these two tribunals are so irregular and saturated with illegalities to make the Judgments a nullity. I hold so because the arguments by the Appellant's representative are valid. In that the Proceedings and the Decision of the Lufilyo Ward Tribunal have been changed and or "forged" is supported by the record. More so, Rosemary Kyusa, the daughter of the Respondent, who is representing her in this appeal has conceded to this by stating before this court that the chairman who heard the case was Francis Mwakajwanga; while Francis Mwakajwanga, according to the proceedings on record is neither a member nor a chairman of the Lufilyo Ward Tribunal. She admitted, that she did not know the members of the Lufilyo Ward Tribunal. She further stated that only one female member out of the eight members was involved in the adjudication of this dispute as the other two female members had been ousted as members.

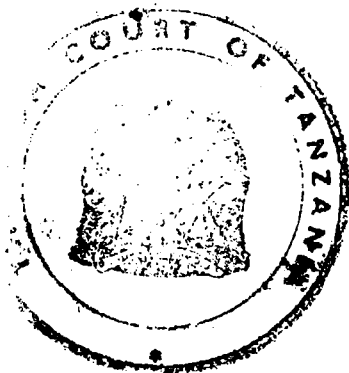
Worse, the proceedings of the Lufilyo Ward Tribunal have been written in a mere exercise book, which has no indication of the Coram of members who sat on each day when the dispute was

called for hearing or settlement or adjudication of the dispute. No clear dates are also shown in those proceedings in that simple Exercise Book with a brand of "One Animal". These proceedings are fatal and incurably defective. The purported Judgment of the Ward Tribunal is not in accordance with the provisions of Section 11 of the Land Disputes Courts Act, CAP 216 R.E. 2002, which provides that –

“Section 11: Each tribunal shall consist of not less than four no more than eight members, of whom three shall be woman who shall be elected by a ward committee as provided for under Section 4 of the Ward Tribunal Act, 1985”

As this appeal is arising out of such muddled up proceedings, and or “forged proceedings”, the same cannot be allowed to stand because they are illegal and not in accordance with the mandatory provisions of the law. Accordingly, they are declared null and void.

For the foregoing reasons this appeal is allowed. The parties if so desire, should institute a fresh suit in a court of competent jurisdiction which shall take care to follow in detail the relevant procedure and laws governing the suit. For avoidance of doubt, in the circumstances of this suit each party shall bear its own costs.



A.F. Ngwala
A.F. NGWALA,
JUDGE
18/06/2014

18/06/2014

Coram: A.F. Ngwala, J.

For Appellant

For Respondent

Court: Judgment delivered in the present^{ca} of the parties.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.

**A.F. NGWALA,
JUDGE
18/06/2014**