

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 5 OF 2015

(From the decision of the District Land and

Housing Tribunal of Iringa in Land

Case Appeal No. 57 of 2014)

RICHARD MGOLOLE ----- APPELLANT

VERSUS

ABDALLAH MWENDA ----- RESPONDENT

28/09/2015 & 15/10/2015

JUDGMENT

KIHWELO, J.

The appellant Richard Ngole is before this court challenging the decision of the District Land and Housing of Iringa in Land Appeal No. 57 of 2014 (Hon. A. Mapunda – Chairman) which upheld the decision of the Image Ward Tribunal in Land Case No. 69 of 2013 that granted the respondent right over the suit land.

The appellant filed in this Court a three ground Petition of Appeal which can be crystallized as follows:-

- 1. That the District Land and Housing Tribunal erred in upholding the decision of the Ward Tribunal while the Ward Tribunal was not properly constituted.*
- 2. That the District Land and Housing Tribunal erred in upholding the decision of the Ward Tribunal which based on contradictory evidence of the respondent and his witnesses and*
- 3. That the District Land and Housing Tribunal erred in giving right to the respondent who failed to prove that he bought the land in dispute from the appellant's brother.*

Before this Court the appellant appeared in person and so is the respondent. In order to serve justice the court directed the appeal to be disposed by way of written submissions which was complied accordingly.

The appellant submitted in support of the first ground that the Chairman of the appellate tribunal ignored the fact that the trial tribunal was not properly constituted while determining this matter. The appellant contended that the provision of Section 14(1) and (2) of the Land Disputes Courts Act, Cap 216 RE 2002 is explicitly clear that in all matters of mediation the tribunal must consist of three members and one of whom at least shall be a woman and that

the chairman of the tribunal shall select all the three members including the convenor who shall preside at the meeting of the tribunal.

The appellant further contended that the proceedings of the Image Ward Tribunal reveals that there were only three members and a Chairman inclusive who presided over the proceedings to mediate the dispute and that they met more that three times. According to the appellant that was an error which made the entire proceedings a nullity. He cited various case laws to buttress his argument. There were **William Stephen V Ms. Leah Julius**, Civil Appeal No. 65 of 2013 CAT at Arusha (unreported), **Juliana Kiyeyeu V Saidi Mpewa**, Miscellaneous Land Case Appeal No. 31 of 2012, High Court of Tanzania at Iringa (unreported) and **Halmashauri ya Walei Parokia ya Mtembwe V Petro Kitalula**, Miscellaneous Land Case Appeal No. 29 of 2010, High Court of Tanzania at Iringa (unreported).

Submitting in support of the second ground of appeal the appellant argued that the evidence of the respondent was contradictory in the sence that while the respondent claimed to have cultivated the suit land from 2010 to 2012 and then purchased the same but his witnesses testified that the respondent rented the suit land from 2011 to 2013 when he bought the same.

He further argued that there was no proof that there was any sale agreement between the appellant and the respondent over the suit land and that it was strange why the respondent remained quiet during the appellant's brother funeral despite the fact that the village leader asked on behalf of the family in case there was anyone who was claiming anything from the deceased.

Arguing in support of the third ground of appeal the appellant forcefully argued that the respondent miserably failed to prove existence of any sale agreement as there was no any sale agreement which was produced before the Image Ward Tribunal. He therefore strenuously prayed that the honourable Court should be pleased to allow the appeal and quash the judgment of appellate tribunal for being bad in law.

In reply the respondent was very brief and to the point. He argued in reply to the first ground of appeal that the argument raised by the appellant with regard to that ground is misconceived because the composition of the Image Ward Tribunal was dully constituted as required by Section 14(1) of the Land Disputes Courts Act, Cap 216 RE 2002 and that throughout the disputes the composition of the trial tribunal was three members whose names and their respective signatures appears in the proceedings.

The respondent argued in reply to the second ground that it is apparent clear from the record of the trial tribunal that the disputed land was rented by the respondent from 2010 to 2012 and that the same were purchased by the respondent in 2013 by oral agreement which was witnessed by Patrick Mgolole. He valiantly argued that the evidence produced before the trial tribunal was watertight hence justifies the trial tribunal's decision.

The respondent further contended that the fact that the respondent remained silent during the burial ceremony when the village leader asked on behalf of the family is immaterial because the respondent could not say anything as there was no claim.

Finally the respondent submitted that the appeal lacks merit hence it should be dismissed.

I have given an anxious and careful consideration to both the grounds of appeal, parties submissions and the records of both appellate and the trial tribunals.

Starting with the first ground of appeal the appellant has spiritedly argued that the District Land and Housing Tribunal grossly misdirected itself by upholding the composition of the Ward

Tribunal which was not properly constituted. In support to this the appellant cited the provision of Section 14(1) and (2) of the Land Disputes Courts Act, Cap 216 RE 2002.

On his part the respondent admittedly agreed that the provision of Section 14(1) of Cap 216 was applicable but went on to argue that throughout the proceedings the Ward Tribunal sat with three assessors hence by any stretch of imagination the Ward Tribunal was properly constituted pursuant to the provision of Section 14(1) of the said Act.

I have painstakingly gone through the records of the Ward Tribunal in order to ascertain what is being impugned and it is conspicuously clear that the Ward Tribunal throughout the proceedings it sat with three members namely:-

1. *William Kitusi* – *Chairman*
2. *Teresini Maginga* – *Member*
3. *Eliudi Mwongi* – *Member*

I have no doubt that judging from the names of the members one Teresina Maginga was a woman.

However, it defies logic to me that the proceedings of the Ward Tribunal were conducted under Section 14(1) which reads:-

“The Tribunal shall in all matters of mediation consists of three members at least one of whom shall be a woman.”

Apparently the provision of Section 14(1) is clear and unambiguous in that it relates to the procedure of the Tribunal when discharging its function of resolving disputes through Mediation and not otherwise.

Mediation has been defined by **Black’s Law Dictionary, 8th edition** at page 1003 to mean;

“A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.”

Undoubtedly what happened in the instant case was not mediation but rather hearing of the disputes by listening to parties and their respective witnesses and that the decision pronounced was binding.

In the instant case the winner took all while the loser lost entirely contrary to the spirit of mediation where each one takes a little and loses a little and above all in mediation the outcome of the proceedings is in the parties own hands which did not happen in the instant case. In my view there is considerable merit in the appellant's submission on this aspect.

This Court had an opportunity to discuss the provision of Section 14(1) of Cap 216 RE 2002 in the case of **Bwatamu Saidi V Saidi Mohamed Kindumbwe**, Miscellaneous Land Case Appeal No. 11 of 2011, High Court of Tanzania at Mtwara (unreported) in which my brother Mipawa, J. had the following to say;

“----- I think by and large that under the provisions of Section 14(1) of the Act embodies mediation sessions and the Tribunal is required therefore in mediation sessions to have three members of which one must be a woman. It has to be noted that not all matters before the Ward Tribunal are successfully mediated and therefore we can not expect those that are not mediated to be thrown out.”

In my view therefore the composition of the tribunal while discharging its function of resolving disputes other than mediation would be that spelt out under Section 11 of the Land Disputes Courts Act, Cap 216 RE 2002 which states, I berg to quote:-

“Each Tribunal shall consist of not less than four not 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 Tribunals Act, 1985.”

It is not gainsaying that if the legislature intended the provision of Section 14(1) to have a broad meaning other than mediation it would have done so expressly and clearly as it is the case with the Village Land Council at Part III of the same Act where Section 7 while providing for the functions of the Village Council it reads in part;

“7. Subject to Section 61 of the Village Land Act, the functions of the Village Land Council shall include:

(a) N/A

(b) Convening meetings for hearing of disputes from parties and

(c) Mediating between and assist parties to arrive at mutually acceptable settlement of the disputes on any matter concerning land within its area of jurisdiction.”

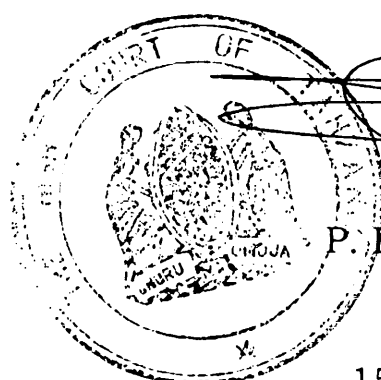
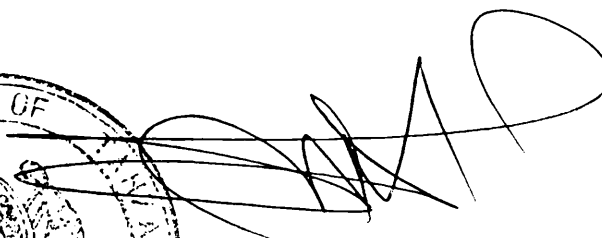
By extension the provision of Section 13 seems to clearly provide that the primary function of the tribunal is to mediate parties. However if mediation fails the tribunal shall determine the disputes in the ordinary way by listening to parties.

It follows therefore that since the law requires the minimum number of members to be four when the Tribunal is hearing the dispute and because in the instant case the composition of members was three then the proceedings of the Ward Tribunal were in essence a nullity and accordingly the proceedings of the District Land and Housing Tribunal are equally a nullity.

I thus proceed to quash the decision and the proceedings of the District Land and Housing Tribunal and that of the Ward Tribunal and order that a *trial de novo* be conducted before a different set of members.

The appeal is thus allowed, however no order for costs is granted.

It is so ordered.



P. F. KIHWELO
JUDGE
15/10/2015