

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

MISCELLANEOUS LAND CASE APPEAL NO. 30 OF 2012

(From the decision of the District Land and Housing Tribunal
of Iringa at Iringa in Land Case Appeal No. 50 of 2012

and Original Ward Tribunal of Mlenge Ward in

Application No. 9 of 2012)

ADAM OMARY ----- APPELLANT

VERSUS

FIDELIS NDELE ----- RESPONDENT

29/09/2015 & 27/10/2015

JUDGMENT

KIHWELO, J.

This is an appeal against the decision of the District Land and Housing Tribunal of Iringa in which Honourable Mapunda A. dismissed the appeal and upheld the decision of Kiwere Ward Tribunal.

A brief background to this appeal indicates that the appellant once upon instituted a Land Application No. 79 of 2009 against eight (8) respondents at the District Land and Housing Tribunal of Iringa and on 4th May, 2011 the appellant won the case. In execution of the decree in Land Application No. 79 of 2011 a court broker Majembe Court Brokers and Auction Mart marked the boundaries and handed over the disputed land to the appellant which also included a portion of the disputed land. Thereafter the appellant hired people to make a water franch in the suit portion which lead to complaints by the respondent who claimed that the suit portion belongs to him. In asserting his claims the respond complained the matter to the Village Executive Officer then Village Land Council for Kiwere and finally he filed a land dispute at Kiwere Ward Tribunal. Upon hearing the parties the Kiwere Ward Tribunal declared the respondent the rightful owner of the disputed portion of land. Dissatisfied by that decision the appellant has come before this Court challenging the decision of the ward tribunal.

In support of the appeal the appellant filed a petition of appeal with ten (10) grounds which in essence faults the decision of the District Land and Housing Tribunal which declared the respondent the lawful owner while the appellant was declared a trespasser.

During this appeal the appellant and the respondent appeared in person and each fended for himself. On the direction of the Court

parties disposed the appeal through written submissions which were duly filed.

Briefly the applicant faulted the decision of the Ward Tribunal in that it left out the issue of boundaries to be dealt during execution by the court broker which was done. He went further to argue that before the Ward Tribunal the appellant's witness one Abdallah was denied chance to testify hence occasioning injustice to the appellant.

The appellant further argued that the concurrent findings of the lower tribunals be set aside and the appeal be allowed. He cited a number of authorities to substantiate his argument.

In response the respondent was brief in that the current portion of land in dispute in this matter is not the one which was in dispute in Land Application No. 79 of 2009 hence the two are not one and the same. He further argued that the applicant did not lead any evidence to prove that he bought the said piece of land.

The respondent admittedly argued that one witness from each side was denied right to adduce evidence but he however argued that given the overwhelming evidence by the respondent there was no way out the applicant could have won the case. He therefore prayed that the appeal should be dismissed with costs.

I have carefully examined the records of the two lower tribunals as well as the arguments raised by the learned counsel and I am of the strong opinion that the propriety of the proceedings at the Ward Tribunal deserves to be considered first because it relates to the very competency of the appeal before this Court.

This being the second appeal I can only interfere or disturb the concurrent findings of facts if it is clearly shown that there has been a misdirection or misapprehension of the evidence, a miscarriage of justice or violation of some principles of law or procedure. This position has been stated in a chain of authorities such as **Bushangila Ng'onga V Manyandamage** [2002] TLR 335 and **Amiratial Damodar's Maltase and Another t/a Zanzibar Silk Stores V A. H Jariwalla t/a Zanzibar Hotel** [1980] TLR 31.

A cursory perusal of the records of the Kiwere Ward Tribunal reveals that the tribunal met on 23rd April, 2012 and 30th April, 2012. Furthermore on the 2nd May, 2012 the tribunal had an opportunity of visiting the *locus in quo* and on 9th May, 2012 the judgment was delivered. However, one conspicuous anomaly was discernible from the proceedings and that is none other than the fact that during the proceedings of the Ward Tribunal the same did not comply to the requirement of the law which requires the tribunal to be composed of a given number of members while discharging its duty of resolving disputes. Section 11 and 14 of Cap

216 RE 2002 prescribes clearly that requirement. This Court has made it very clear that at every seating of the tribunal the coram should be clearly shown for the interest of justice. However in the instant appeal the proceedings of the Kiwera Ward Tribunal did not indicate the composition of the tribunal on 23rd April, 2012 and on 30th April, 2012 while on 2nd May, 2012 during the *locus in quo* six members participated and on 9th May, 2012 seven members were present during the judgment.

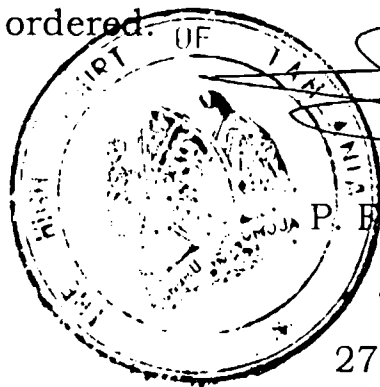
The court had an opportunity to discuss the composition of the Ward Tribunal in the following cases **Bwatamu Saidi V Saidi Mohamed Kindumbwe**, Miscellaneous Land Case Appeal No. 11 of 2011, High Court of Tanzania at Mtwara (unreported), **William Stephen V Ms. Leah Julius**, Civil Appeal No. 65 of 2013, Court of Appeal of Tanzania at Arusha (unreported), **Juliana Kiyeyeu V Said 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 Kitaluka**, Miscellaneous Land Case Appeal No. 29 of 2010, High Court of Tanzania at Iringa (unreported).

Undoubtedly the Kiwera Ward Tribunal did not comply with the law making the proceedings of the Ward Tribunal a nullity and accordingly the proceedings of the District Land and Housing Tribunal a nullity.

I must 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.

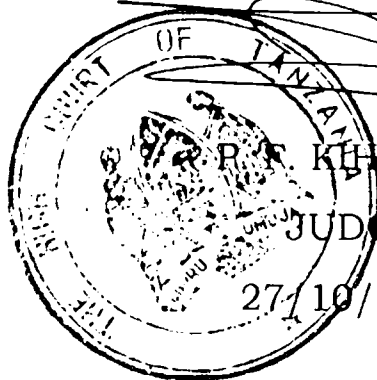



P. E. KIHWELO

JUDGE

27/10/2015

Right of appeal is fully explained.




P. E. KIHWELO

JUDGE

27/10/2015