

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

MISCELLANEOUS LAND CASE APPEAL NO. 18 OF 2013

(From the decision of the District Land and Housing  
Tribunal of Njombe at Njombe in Land Case Appeal  
No. 21 of 2012 and Original Ward Tribunal  
of Mtwango Ward in Application No. 2 of 2012)

AUGUSTINO HONGOLI ----- APPELLANT

VERSUS

OSCAR MGOBA ----- RESPONDENT

01/12/2015 & 15/12/2015

**JUDGMENT**

KIHWELO, J.

The Appellant herein filed an appeal before this court seeking to challenge the decision of the District Land and Housing Tribunal of Njombe in Land Appeal No. 21 of 2012 which partly allowed the appeal, quashed the decision of Mtwango Ward Tribunal and set aside the proceedings and the decision of that Ward Tribunal.

Aggrieved by that decision the appellant filed an appeal whose Petition has three grounds which may be crystallized as follows:-

- 1. That the appellate tribunal erred in not taking into account that the respondent trespassed into the suit land and sold it to one Zuru Ng'ingo.*
- 2. The appellate tribunal erred in not considering the weight of evidence which was produced by the appellant.*
- 3. The appellate tribunal erred in not following the proper procedure in reaching at the decision it reached.*

The brief background to this matter which has chequered history and which was the basis of the decision of the trial tribunal is that on 27<sup>th</sup> January, 2012 the appellant filed a land matter before the Mtwango Ward Tribunal complaining that the respondent had trespassed into his 2<sup>1/2</sup> acre of land and sold the same to one Zuru Ng'ingo. Upon hearing the parties the trial tribunal found out that the appellant was unable to prove the case and therefore pronounced judgment in favour of the respondent.

Aggrieved by that decision the appellant filed an appeal before the District Land and Housing Tribunal of Njombe seeking to challenge that decision. Upon full trial the District Land and Housing Tribunal pronounced its judgment in which it found out that the proceeding of the Ward Tribunal suffered two fatal

irregularities which is failure to include and consider the opinion of the members of the trial tribunal contrary to Section 4(5) of the Ward Tribunals Act of 1985 and secondly that the composition of the trial tribunal was not indicated throughout the proceedings which makes it impractical to determine the composition of the members of the tribunal pursuant to Section 11 of the Land Disputes Courts Act Cap 216 RE 2002. The trial tribunal therefore quashed and set aside the proceedings and decision of the Ward Tribunal with costs.

Dissatisfied by that decision the appellant came before this Court for further appeal hence the instant appeal.

Before this Court the appellant and the respondent both appeared in person and upon the direction of the Court the matter was disposed through written submission which however, was not complied by the respondent hence the court proceeded to compose judgment on assumption that the respondent opted not to defend and oppose the appeal.

A cursory and careful perusal of the appellant's written submission reveals clearly that there is nothing substantial to support the grounds of appeal which seems to be challenging the

He went on to say that the testimony of Jafar Ngalembula the brother in law of their late father and the uncle of the appellant and the respondent testified that the suit land belongs to the respondent as he was around too when the same was allocated to the respondent.

The respondent contended that it is on the strength of the evidence on record that the appellate tribunal gave the respondent title over the suit land and that the appellate tribunal did not give weight to the testimony of Dominicus Malenda and Fidelis Malenda because they are blood relatives of the appellant sharing both the mother and the father. He therefore prayed that the appeal should be dismissed.

I have given an anxious and careful consideration to the submissions by the parties and upon a cursory perusal of the records of the Ward Tribunal I have come to find that there was a glaring irregularities which both the District Land and Housing Tribunal and the Ward Tribunal overlooked while determining this matter. The irregularity which is discernible in the proceedings of the Ward Tribunal is in relation to the quorum of the members who presided over this matter at that level.

decision of the District Land and Housing Tribunal that nullified the proceedings and judgment of the trial tribunal.

I have painstakingly gone through the records of the appellate as well as the trial tribunal and one simple issue cries for my determination and that is whether the instant appeal is meritorious.

In an attempt to answer the above issue which do not need to detain me much I will traverse the two provisions which the appellate tribunal referred to and that is Section 4(4) of the Ward Tribunals Act, Cap 206 RE 2002 as well as Section 11 of the Land Disputes Courts Act, Cap 216 RE 2006.

Section 4(4) of the Ward Tribunals Act provides;

*“4-(1) N/A*

*(2) N/A*

*(3) N/A*

*(4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the chairman shall have a casting vote in addition to his original vote.”*

A perusal of the record of the Ward Tribunal it is conspicuously clear that there is nowhere indicated that there was such compliance to Section 4(4) of Cap 206 RE 2002 above.

On the other hand Section 11 of the Land Disputes Courts Act, Cap 216 RE 2002 reads as follows:-

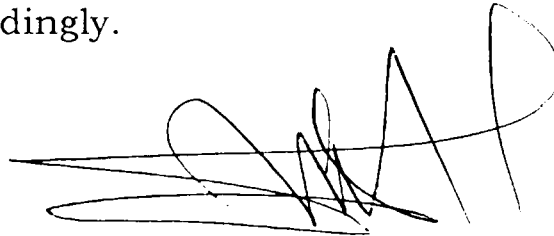
*“11. Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under Section 4 of the Ward Tribunal Act.”*

A further perusal of the records of the trial tribunal reveals conspicuously that the tribunal sat in several occasions. However, the composition of the tribunal was not indicated in every sitting hence making it difficult to establish whether or not the tribunal sat with the requisite number of members to form a quorum which is the import of the provision of Section 11 of Cap 216 RE 2002.

This Court has had an occasion to discuss the logic behind the need to have the quorum of members indicated in every sitting of the tribunal in the case of **Julius S. Mshai V Daud Mlumba**, Miscellaneous Land Application No. 41 of 2008, High Court of Tanzania at Dodoma (unreported).

In the circumstances above I am of the respectful opinion that there is no compelling reason to interfere with the findings of the District Land and Housing Tribunal hence the appeal is devoid of merit as such it is dismissed. The same is dismissed with costs.

Ordered accordingly.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

P. F. KIHWELO

JUDGE

15/12/2015