

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

MISCELLANEOUS LAND CASE APPEAL NO. 16 OF 2011

(From the decision of the District Land and Housing

Tribunal of Iringa at Iringa in Land Case Appeal

No. 66 of 2008 and Original Ward Tribunal of Ilula

Ward in Application No. 37 of 2008)

LEONARD MALENDIA ----- APPELLANT

VERSUS

JUMANNE MALENDIA ----- RESPONDENT

1/12/2015 & 15/12/2015

**JUDGMENT**

KIHWILO, J.

Leonard Malenda has come before this Court by way of appeal seeking to challenge the decision of the District Land and Housing Tribunal in Land Appeal No. 66 of 2008 which allowed the appeal and set aside the decision of Ilula Ward Tribunal in Land Case No.

37 of 2008. The appeal was supported by a Petition of Appeal which raised two grounds of appeal that can be crystallized as follows:-

- 1. That the appellate tribunal erred in deciding the appeal against the appellant despite the overwhelming evidence of title to the appellant.*
- 2. That the appellate tribunal erred in not taking into account the opinion of the assessors who are conversant with Hehe Customary Laws.*

Before this Court the appellant was represented by Mr. Onesmo Francis, learned counsel while the respondent appeared in person. The appeal was disposed through oral submissions.

Amplifying on the first ground of appeal Mr. Onesmo, contended that the records of Ilula Ward Tribunal reveals that the appellant was allocated the suit land by his late father in 1998 and that is proved by the testimony of Fidelis Malenda and Dominicus Malenda and that since 1998 the suit land was under the ownership of the appellant who owing to his age of 17 years by then left the suit premise under the custody of Dominicus Malenda. According to Mr. Onesmo the evidence on record is so overwhelming that the appellant is a legitimate owner of the suit land.

Arguing in support of the second ground of appeal Mr. Onesmo strenuously submitted that the trial chairperson's conduct of not considering the opinion of assessors in relation to the appellant's late father's right to allocate the suit land was a misnomer. He valiantly argued further that the judgment of the appellate tribunal does not in any way indicate any strong reasons to reveal that the appellant's father's conduct of allocating the suit land to the appellant was unlawful. Mr. Onesmo submitted that it was after the death of the appellant's father that the respondent trespassed the suit land. He therefore prayed that the instant appeal should be allowed with costs.

In response the respondent submitted that the appellant's father had two wives each one with a farm for herself and her children. He went on to say that the appellant and the respondent shared the same father and that their late father way back in 1971 allocated the suit land to the respondent and that since then he has been cultivating the suit land.

In further reply the respondent spiritedly argued that the District Land and Housing Tribunal was right when it relied upon the testimony of Yulunimus Malenda the administrator of the estate of their late father who testified that the suit land belonged to the respondent as he was around when the respondent was allocated.

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.

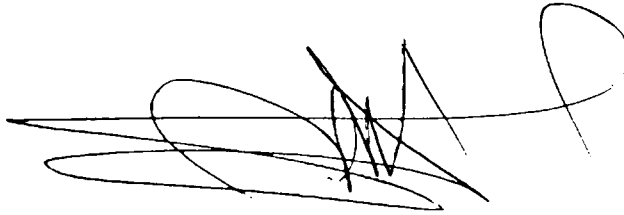
According to Section 11 of the Land Disputes Courts Act Cap 216 RE 2002 the composition of the Ward Tribunal when conducting trial is the minimum of four members and one of whom must be a woman.

A thorough scrutiny of the records of the Ward Tribunal reveals that the trial met on 24<sup>th</sup> June, 2008 and 4<sup>th</sup> July, 2008 but surprisingly none of those dates the composition of the Ward Tribunal was indicated hence making it difficult for this Court to determine whether the tribunal did sit with the requisite number of members as required by law. Time and again this court has insisted the mandatory requirement to have the names of members appear in every seating of the Ward Tribunal. This was religiously stated in the case of **Julius S. Mshai V Daud Mlumba**, Miscellaneous Land Application No. 41 of 2008, High Court of Tanzania at Dodoma (unreported).

It follows therefore, that, since the law requires the tribunal to sit with the requisite number of members which in the instant case it is not indicated except on the date of judgment then the proceedings of the Ward Tribunal were *nullity ab initio* 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.

It is so ordered.

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

P. F. KIHWELO

JUDGE

15/12/2015