

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

(APPELLATE JURISDICTION)

**MISC. LAND APPEAL NO. 03 OF 2016**

(Arising from the District Land and Housing Tribunal Shinyanga in Misc. Land Application No. 12 of 2016 (E.F. Sululu, Chairman); Original decision of Ushetu Ward dated 20/05/2005)

**THE BOARD OF TRUSTEES OF  
F.P.T.C CHURCH.....APPELLANT**

**VERSUS**

**THE BOARD OF TRUSTEES OF  
PENTECOSTAL CHURCH.....RESPONDENT**

Date of Last Order: 19.10.2018  
Date of Judgment: 21.12.2018

**JUDGMENT**

**V.L. MAKANI, J**

This appeal is by the BOARD OF TRUSTEES OF F.P.T.C. CHURCH. They are appealing against the decision of Shinyanga District Land and Housing Tribunal in Misc. Land Application No. 12 of 2016 (E.F. Sululu, Chairman). The matter originated from the judgment of Ushetu Ward Tribunal dated 20/05/2005. The respondent is the Board of Trustees of Pentecostal Church.

The origin of the appeal is execution proceedings that were initiated by the respondent arising from of the judgment of Ushetu Ward

Tribunal (the **Ward Tribunal**). The application for execution was filed in the Shinyanga District Land and Housing Tribunal (the **District Tribunal**) and the appellant (then the judgment debtor) opposed the execution proceedings. However, the District Tribunal found that the grounds of objection raised by the judgment debtor had no merit as they were fit grounds for an appeal and the application for execution was granted. Being dissatisfied with the decision of the District Court the appellant filed this appeal with three grounds of appeal as follows:

- 1. That the honourable chairman erred in law to order execution of the decision of the Ward Tribunal for Ushetu Ward which was not signed by members of such Tribunal.*
- 2. That the honourable Chairman erred in law to order execution of the decision of Ushetu Ward Tribunal in favour of the respondent and against the appellant while both parties were not parties to the original proceedings before the said trial Tribunal.*
- 3. That the honourable Chairman erred in law to order execution of the decision of Ushetu Ward Tribunal while the particulars of the suit land/property claimed by the complainant were not disclosed.*

At the hearing of the appeal the appellant was represented by Mr. Audax Constantine, Advocate and Mr. Frank Samwel, Advocate represented the respondent.

As for the first ground Mr. Audax said a close scrutiny of the decision of the Ward Tribunal dated 20/05/2005 showed that the one who signed the said decision was Michael Emily who was the Secretary.

He said according to section 4(4) of the Ward Tribunal Act the decision of the Ward Tribunal has to be given by the majority of the members and according to section 4(2) of the Act the Secretary is not a member. He said the decision that was supposed to be executed by the District Tribunal was not proper as it was not signed properly by all the members and hence not a lawful decision of the Ward Tribunal he thus said the decision of the Ward Tribunal could not have been executed.

As for the second ground Mr. Audax said the decree holder and the judgment debtor were not parties in the original proceedings. He said the parties in the Ward Tribunal were Rev. Gideon Maganga and Rev. Paul Yohana who were not parties in the application for execution and are not parties in this appeal. He said the application was therefore not proper and could not be executed on the basis of the decision of the Ward Tribunal because parties in the application for execution were not the same parties in the judgment of the Ward Tribunal.

As regards the third ground Mr. Audax said the decision of the Ward Tribunal did not reflect the actual dispute. He said the decision did not give details and particulars of the said land in dispute. He cited the case of **Daniel Dagala Kanuda (Administrator of the Estate of the late Mbalu Kushale Baluda) vs. Masko Ibeho and 4 Others, Land Appeal No. 26 of 2015 (HC-Tabora)**(unreported). He said since there were no particularised details of the suit land then it would have been difficult for the District Tribunal to execute

the decision of the Ward Tribunal. He said the Chairman erred for ordering execution of land that was not particularised and proceeding with such execution would entail chaos. For the reasons advanced Mr. Audax prayed the appeal to be allowed with costs.

In response Mr. Frank said all the grounds of appeal save for one are not worth being considered, as they were not raised at the District Tribunal. He said only the first ground is tenable. Secondly, Mr. Frank argued that the complaints in the appeal are in respect of the Ward Tribunal. He said for complaints of such nature the remedy are appeal or revision. He said the decision of the Ward Tribunal was not appealed against. He further said if the decision of the District Tribunal were to be quashed and set aside as prayed; then decision of the Ward Tribunal would be left hanging.

As for the first ground Mr. Frank said there is nowhere in the cited provisions of section 4(2) and 4(4) of the Ward Tribunal Act that shows who is to sign a decision of the Ward Tribunal. He said section 4(4) states that the decision of the Ward Tribunal shall be on the majority and section 4(2) states how the Secretary is obtained. He said the provisions do not reflect who is to sign the decision or whether or not the Secretary is allowed to do so. He said composition of the Ward Tribunal is under section 5 of the said Act and specifically section 5(1) of the Act, which disqualifies a legal person or a person who is employed in the judiciary to be appointed as a member of the Ward Tribunal. He said this argument is also supported by section 45 of the Land Disputes Courts Act and so

things like who signed the decision and the like do not occasion any injustice.

Responding to the second ground Mr. Frank said this is also covered by section 45 of the Land Disputes Courts Act. He said the complainant and respondent in the Ward Tribunal are coming from the churches that are parties in the appeal. He said the two persons Rev. Gideon Maganga and Paulo Yohana are members of the Board of their respective churches. He said the judgment of the Ward Tribunal reflects this fact. He said according to the Trustees Incorporation Act CAP 218 RE 2002 at section 3 it is stated that all religious groups are required to have a Board of Trustees and under section 8 of the said Act the Board has the power to sue and be sued. He said since the pastors were all from their respective Board of Trustees, and they did not know the law then section 45 of the Land Disputes Courts Act comes into play since no miscarriage of justice was occasioned. Mr. Frank prayed this ground to be disregarded.

As for the last ground Mr. Frank submitted that the decision of the Ward Tribunal states that the suit land has a Title Deed and the details of the suit land are in the said Title Deed since it was a registered land. He said though the number of the Title Deed was not reflected in the decision but it was mentioned and states when it was paid for. He said the cited case of **Daniel Dagala Kanuda** (supra) is distinguishable as it was in respect of an unregistered land. He

concluded by praying for the appeal to be dismissed so that the execution process continues.

In rejoinder Mr. Audax said the grounds of appeal were also discussed in the District Tribunal when arguing the preliminary objection that was raised by the appellant. He said the phraseology might have been different but the meaning is the same. He further said the Boards of Trustees of FPTC and the Board of Trustees of Pentecostal Church were not parties in the Ward Tribunal they only surfaced during the execution. So the issue of appeal or revision could not arise. He said if one impleads trustees he has to prove that the trustees have been registered and are in existence. He said it would be difficult for the court to order execution where the parties are new in the proceedings.

As for the first ground the rejoinder by Mr. Audax was that it is common knowledge that a decision has to be signed by the court and according to section 4(4) of the Ward Tribunal Act the decision has to be signed by members. He reiterated that the secretary is not a member so the decision of the Ward Tribunal that was signed by the secretary is a nullity and section 45 of the Land Disputes Courts Act is not of assistance.

In rejoinder of the second ground, Mr. Audax said the two pastors Gideon Maganga and Paul Yohana are different from the parties in the District Tribunal and this appeal, which are legal entities. He said it could not be stated with certainty that the pastors are among the

trustees in their Board. He said individual pastors, reverends and sheikhs cannot sue in their own capacities. He said section 45 of the Land Disputes Courts Act could not apply in this instance. He said it was not proper for the Chairman to order execution while the parties in the Ward Tribunal and District Tribunal are different.

As for the third ground Mr. Audax submitted that if the suit land was registered and had a Title Deed the decision of the Ward Tribunal would have stated so. He said the decision of the Ward Tribunal did not state anything in respect of the details of the suit land and even in the application for execution the details of the suit land are not reflected. He said the order for execution on an unknown land was not proper and the case cited is still supportive of the argument. He said by not praying that the decision of the Ward Tribunal be quashed does not mean it is executable. He prayed for the decision of the District Tribunal be quashed and set aside and the appeal be allowed.

I have listened to the arguments for and against the appeal by the learned Advocates. The issue for determination is whether or not this appeal has merit.

According to section 4(2) of the Ward Tribunal Act, each Ward Tribunal is required to have a Secretary who is appointed by the local government authority within the area the Ward Tribunal is located. The quorum at a sitting of the Tribunal shall be one half of the total number of members (section 4(4) of the Ward Tribunal

Act). 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 (section 4(5) of the Ward Tribunal Act). A Secretary of the Ward Tribunal shall attend all sittings and record all its proceedings but shall not participate in decision-making (section 5(3) of the Ward Tribunal Act).

In the present case, it is reflected that the Chairman – Athumani S. Saidi, the secretary – Marco Emil and one member Dolotea Shilingi, signed the judgment of the Ward Tribunal. Since the Secretary signed the judgment it means he participated in the decision-making and he has taken ownership of the said judgment. This is a clear violation of section 5(3) of the Ward Tribunal Act, which does not allow the Secretary being part of the decision-making machinery of the Tribunal. The quorum of the Ward Tribunal was not properly constituted and therefore the decision emanating therefrom was contrary to the law and hence a nullity; and subsequently, the said judgment could not be executable. The District Tribunal therefore erred to order execution in respect of the judgment of the Ward Tribunal, which in essence is a nullity (see: **Patrice Ama vs. Gisman Hawu, Misc. Land Appeal Mo. 18 of 2011 (HC-Arusha)** (unreported)). This ground therefore succeeds.

Mr. Frank wanted this court to invoke section 45 of the Land Disputes Courts Act, CAP 216, which provides that no decision or order of the Tribunals (Ward and District) shall be reversed or

altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing. But having established that the decision is a nullity the application of the said provision becomes redundant, as there is no decision at all.

Without prejudice to the above, I would wish to also discuss the other grounds of appeal though Mr. Frank said there were not proper grounds of appeal as they were not discussed in the District Tribunal; but with due respect, these grounds were discussed when the parties were arguing the preliminary objections and Mr. Frank was representing the respondent herein and he filed written submissions to oppose the said preliminary objections. So claiming now that these grounds/issues were not raised at the District Tribunal cannot be true.

As for the second ground Mr. Audax submitted that the parties in the execution application at the District Court were not the parties in Ward Tribunal. I have had an opportunity of going through the judgment of the Ward Tribunal and indeed, the judgment is not titled to show the names of the parties; and further it is not clear who are the parties and in what capacities they are claiming. There is a mention of the names of the churches, that is, the parties in the present appeal and the names of the pastors mentioned by the learned Counsel as the original parties at the Ward Tribunal but unfortunately, the judgment is not well defined as to who is claiming what and from whom. The judgment is also contradictory because it gives the right to one party (allegedly the respondent) but at the

same time bars both the churches (the parties herein) from using the suit premises. For that reason execution is not viable as the judgment is not comprehensive and explicit. This ground therefore succeeds.

The last ground is on the description of the suit land subject of the execution. Mr. Audax claimed that the details were not sufficient for proper execution. I agree with him. In the judgment of the Ward Tribunal the description of the suit land has not been stated; and equally in the application for execution no description or details of the subject of the execution has been stated. The respondent applied for an eviction order and handing over the suit property by the appellant but the execution exercise cannot be properly conducted without proper details of the suit land. Mr. Frank said there is a Title Deed and it was mentioned in the judgment, I agree there is a mention of "Hati Miliki" but such blanket description cannot suffice as proper description of the suit land. If at all Mr. Frank who drew the application for execution knew the proper description of the suit land he would have provided it in the said application. The rationale for proper description is to make execution easy and to avoid any chaos by proper identification of the suit property. The judgment of the Ward Tribunal is therefore not executable for failure to have proper details/description of the suit land. This ground is meritorious.

Having established that the judgment of the Ward Tribunal is a nullity, it is apparent that the execution proceedings at the District

Tribunal were based on a nullity and thus no appeal can suffice before this court. In that respect, I invoke the revision powers and hereby nullify the proceedings and judgments of the Tribunals and order a fresh trial before Ushetu Ward Tribunal. There shall not be orders as to costs.

It is so ordered.

The seal of the High Court of Tanzania is circular, featuring the national coat of arms of Tanzania in the center. The text "THE HIGH COURT OF TANZANIA" is written around the perimeter of the seal, with a small star at the bottom center.  
*V. L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**21/12/2018**