

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISCELLANEOUS LAND CASE APPEAL No. 18 OF 2018

ANISETH SIMONI.....APPELLANT

VERSUS

EZEKIEL MBULWA.....RESPONDENT
(Appeal from the Decision of the District Land and Housing Tribunal of
Rukwa in Land Appeal No. 93 of 2016)

JUDGMENT

24th September, 2018, - 23rd January, 2019

MRANGO, J:

This is a second appeal. The matter has its genesis from Kanda Ward tribunal (hereinafter referred to as “the trial tribunal”) whereby the appellant herein sued the respondent herein in order for a piece of land whose size was not disclosed (henceforth the land in dispute) formerly sold to him (respondent) by one Simon Mwananjela to be redeemed by him (appellant). The trial tribunal decided in favour of the respondent on the grounds namely that it has considered the agreement reached between the respondent and the said Simon Mwananjela who sold the land in dispute; and, that the respondent

possessed and used the land in dispute for about twenty eight (28) years.

Aggrieved by the trial tribunal decision, the appellant unsuccessfully appealed to the District Land and Housing Tribunal of Rukwa (henceforth "the appellate tribunal"). His complaints before the appellate tribunal amongst were that the trial tribunal was not properly constituted and that the trial tribunal failed to consider the exhibits available on record properly.

Before the appellate tribunal both parties appeared in persons, unrepresented. Upon hearing the appeal, the appellate tribunal found the same had no merit and it proceeded to dismiss it and declare the respondent as a rightful owner of the land in dispute on the grounds that the Kanda ward tribunal was properly constituted and that the seller of the land in dispute sold the same thus the appellant had no any right to clam for land in dispute. Further she stated that even if he would have that right yet he is time barred to claim for the land in dispute as it had been in occupation by the respondent for more than twelve years.

Again, having being dissatisfied with the said decision, the appellant appealed to this court as his second bite by lodging a three grounds petition of appeal which for the reason which will transpired herein below in the course of composing this judgment I will not reproduce them. But in brief his claims hinges on the ground that the decision of the appellate tribunal in favor of the respondent is want of proof. As well, in his effort to oppose the appeal the respondent file the so called reply to the petition of appeal of which for the same reason I will not reproduce them.

Like when the matter was before the lower tribunals, before this court, again both parties appeared in persons during the hearing of this appeal. They were unrepresented. Arguing for his appeal, the appellant prayed to adopt the grounds of appeal as they appeared in his petition of appeal. He had nothing more to add.

In response, the respondent as well had nothing to add, but instead he prayed for this court to adopt his reply to petition of appeal he had lodged in this court. He had nothing to add.

However, in the cause of composing this judgment, I have thoroughly gone through the files of the two tribunals below; and at

very outset I am saying I am not in agreement with the conclusion arrived at by the appellate tribunal in respect of the composition of the trial tribunal. This point as pointed herein above was raised by the appellant. The appellate tribunal Chairperson arrived to the conclusion that the trial tribunal was properly constituted. She stated that after she gone through the records of Kanda ward tribunal, she noted that the members who determined the suit were six namely; Rose Manune (Ke), Leus Chatamanta (Me), Eliasa Msenga (Ke), Daudi Mwanisawa (Me), Kenedi Kasongo (Me) and Rahadi Samsoni (Me) .

With due respect, it was not, the trial tribunal record does not speak so. The same clearly reveals that there is a problem as regards to the quorum or attendance of the members of the trial tribunal who sat during the determination of matter before it. As regards to the composition of the ward tribunal, the law is clear as provided for under **Section 11 of the Land Dispute Courts Act, CAP. 216** (henceforth CAP. 216). The section reads thus and I quote that:

"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 Tribunals Act, 1985"

The above quoted **Section 11 of CAP. 216** should be read together with **Section 4 (3) of CAP. 206** which reads:

"The quorum at a sitting of a Tribunal shall be one half of the total number of members"

Thus the trial tribunal for that matter ought to be constituted of by at least four members and not less than that throughout the hearing of the case. The records should be self explanatory as regards to the member who sat in that session to hear evidence and determine the dispute. Unfortunately, in the instant matter in some of trial tribunal session the records do not show if there were members who sat to hear the case.

It is apparent from the trial tribunal record that on 16.8.2016 hearing of the case at the trial tribunal commenced whereby the complainant, Aniseth Simoni gave his evidence. He was asked

questions by the defendant, Ezekiel Mbulwa and by tribunals' members. Thereafter, Eliabasi Kaulule and Simon Mwananjela complainant's witnesses gave their testimonies, but neither the complainant nor the defendant and or tribunal members put questions to them.

On the same day of 16.8.2016, the defendant, Ezekiel Mbulwa gave his defence story. He was asked questions by the complainant, Aniseth and tribunal members. Unknowingly, the case comes for continuation of hearing on 18.8.2016 whereby one Korneli Kisuta, defendant's witness gave his testimony. He was asked question by the complainant, Aniseth Simoni and tribunal members. Surprisingly, again, the defendant was invited to give his testimony, but neither the complainant nor the tribunal members put questions to him. Names of tribunal members as listed by appellate tribunal Chairperson appears only when they visited the locus in quo on 19.8.2016 and on 26.8.2016 when Aniseth Simoni was again invited to give his testimony but without being asked questions by the defendant and or tribunal members.

The trial tribunal records are silent if there was any tribunal member who sat on 16.8.2016 when Anseth Simoni, complainant and his witnesses (Eliabasi Kaulule and Simoni Mwananjela) were giving their testimonies, as well when Ezekiel Mbulwa, defendant was giving his defence and on 18.8.2016 when Kornel Kasuta, defence witness gave his testimony. Even when the judgment was delivered on 2.9.2016, it is not shown if the tribunal members were present when the same was delivered to the parties. It is my considered view that, failure to show their names on each session they sat contravened **Section 11 of CAP. 216.**

It is trite law that hearing and determination of cases by the ward tribunal without involving tribunal members or without showing an attendance of the tribunal members during its session is fatal and renders the whole proceedings and the decision thereof null and void. With that in mind, I find that the trial tribunal was not properly constituted and therefore the decision reached by it is totally unlawful and void *ab initio*. If the appellate tribunal chairperson would have properly perused the trial tribunal record she would have

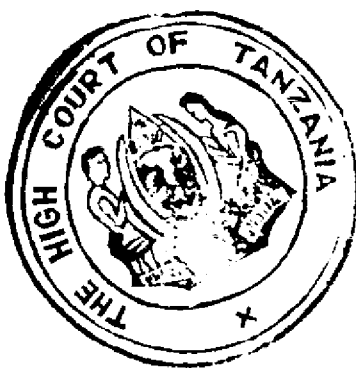
not arrived at the conclusion she reached. In short, she would have allowed the appeal.

Notwithstanding the foregoing, I have also noted that the trial tribunal record does not clearly and precisely shows the complainant's claim. I am aware that the trial tribunals are not bound by procedures, they used their own procedures in admitting and hearing cases instituted before it. They do not use complaints or claim forms, but I am of the view that at least the record should have vividly and clearly indicates the claim by the complaint. The record is also silent on that aspect, but the claim is only featured in the parties' testimonies that they are claiming over ownership of a piece of land. All these lead me to find with no hesitation that this case was wrongly and improperly handled by the trial tribunal.

All said and done, I find the irregularities found and determined herein above are fatal and makes the proceedings and judgement thereof of the trial tribunal a nullity. The judgment and or order in appeal in the appellate tribunal of Rukwa were based on such nullity proceedings and judgement of the trial tribunal. In the premises, I do invoke the revisionary powers enshrined under the provision of

Section 43 (1) (b) of CAP. 216 and proceed to quash the proceedings and decision of the lower tribunals. The orders made consequent to such nullity proceedings and decisions in both lower tribunals are also set aside. In the circumstances of the case the order of retrial is not preferable. Instead, I direct and order that any party is at liberty to institute a case afresh; and, in the meantime, the *status quo* before filing of the case (No. 14/2016) before Kanda Ward tribunal be maintained. In view of the fact that the issue of composition of the trial tribunal was raised by the appellant at the appellate tribunal, I order the respondent to bear costs.

It is accordingly ordered.

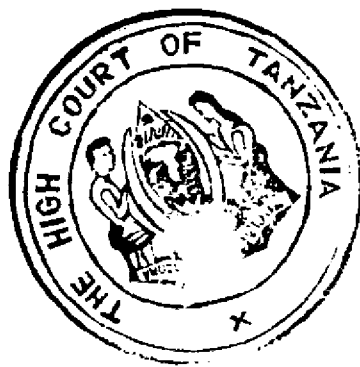



D. E. MRANGO
JUDGE
23.1.2019

Date - 23.1.2019
Coram - Hon. R.M. Mbuya – DR.
Appellant - Present
Respondent - Present
B/C - J.J. Kabata

COURT: Judgment hereby delivered this 23rd day of January, 2019 in the presence of both parties and the Court Clerk Ms. J. J. Kabata.

Rights of appeal explained.



A handwritten signature in black ink, appearing to read "R.M. MBUYA", is written over a horizontal line.

R.M. MBUYA
DEPUTY REGISTRAR
23.01.2019