

IN THE HIGH COURT OF TANZANIA

LAND DIVISION

AT SUMBAWANGA

MISC. LAND APPEAL NO. 22 OF 2019

(From the decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Application No. 136 of 2018)

TEOFRIDA D/O ALFONCEAPPELLANT

VERSUS

POTINO S/O SIMFUKWERESPONDENT

JUDGEMENT

16th December 2019 – 24th February 2020

MRANGO, J

This is a second appeal. The matter has its genesis from Kipeta Land Tribunal (hereinafter referred to as a trial tribunal) whereby the appellant herein sued the respondent herein for the claim of piece of land (hereinafter referred to as the disputed land) measured eight (8) footsteps.

The appellant won the suit registered as civil suit no. 70 of 2018.

Aggrieved by the trial tribunal decision, the respondent successfully appealed to the District Land and Housing Tribunal for Rukwa (herein after referred as the appellate tribunal) with the complaints that, the trial

tribunal erred in law and fact for entertaining the land dispute which was time barred, that the trial tribunal erred in law and fact for entertaining the land dispute while not properly constituted comprised with three members all of them being men; that the trial tribunal failed to consider the evidence adduced by the appellant and his witnesses; that the trial tribunal erred in law and fact for the failure to give the appellant opportunity to call his important witnesses who were previous owners of adjacent lands; that the trial tribunal erred in law to consider the evidence of Village Executive Officer one Julius Nkwazi; and the trial tribunal erred in law and fact for being biased.

At the appellate tribunal, both appellant and respondent appeared in persons, unrepresented. Having heard the appeal, the appellate tribunal found the appeal had merit on the ground of limitation of time in land recovery suit as the appellant had a long stay at the disputed land and again the trial tribunal did not meet the requisite quorum as per requirement of the law as three members only participated in the proceedings, hence proceeded to quash and set aside the decision of the trial tribunal by allowing the appeal with costs.

Dissatisfied with the decision of the appellate tribunal, the appellant herein lodged to this court four grounds of petition of appeal quoted as hereunder;

- 1. That, the appellate Chairman of the District Land and Housing Tribunal erred in law when failed to consider the proper issue of the conflict of the disputed land.**
- 2. That, the appellate Chairman of the District Land and Housing Tribunal erred in law when failed to consider that, the conflict occurred on September 2018 when the respondent invaded eight (8) footsteps of the suitland.**
- 3. That, the appellate Chairman of the District Land and Housing Tribunal failed to consider the evidence as adduced by Julius Nkwazi prior VEO at Kipeta Village as one of members of committee of the village council witnessed and justified to be my true owner of the particular the land claimed of eight (8) footsteps and occupied for more than twelve years since 1996 before invaded by the respondent on September 2018.**

4. That, the appellate Chairman of the District Land and Housing Tribunal erred in law when differ with the opinion of assessors while she was aware that the event occurred on 2018 and not on 2002 therefore it was wrong to apply the customary laws (Limitation of proceedings) Rule 1964 in order to favour the respondent, while she knows that the appellant filed the suit within the right time according to event of invention that it was occurred on September 2018.

Like it was before the appellate tribunal, before this court, both parties appeared in persons, unrepresented. When the case was called on for hearing on 27. 11. 2019, the appellant prayed for the court to adopt her grounds of appeal she has lodged, and she had nothing more to add, whereas the respondent prayed for the court to adopt his reply to the petition of appeal he has lodged and he had nothing more to add.

The issue for determination in this case is whether the appeal has merit or not.

Having perused the decision of trial and appellate tribunal, it is very clear that the number of members who participated in the proceedings in the trial tribunal were three (3) members and all of them being men

contrary to the demand /requirement of the **section 11 of the Courts (Land Dispute Settlements) Act, No. 2 of 2002** which requires each tribunal to be consisted by not less than four (4) or more than eight (8) members of whom three shall be women in case of eight members and one woman in case of four members.

It is also the requirements of the Ward Tribunal Law that the composition of the Ward Tribunal members are to be adhered to before any proceedings including composition, delivery and signing of its decision.

Section 4 of the Ward Tribunal Act, Cap 206 provides that:

1. Every Tribunal shall consist of
 - a) Not less than four or more than eight member elected by the Ward Tribunal Committee from amongst a list of names of persons residing in the Ward compiled in the prescribed manner;
 - b) A chairman of the tribunal appointed by the appropriate authority from among the members elected under paragraph (a)
2. There shall be a secretary of the tribunal who shall be appointed by the local government authority in which the Ward in question is situated upon recommendation by the committee.

3. The quorum at a sitting of a Tribunal shall be one half of the total number of members.
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 a equality of votes the chairman shall have a casting vote in addition to his original vote

My perusal of the trial tribunal record also indicates that the decision of the trial tribunal was attended and signed by one member (Chairperson) and the secretary, however, the secretary according to **section 24 (2) of the Ward Tribunal Act, Cap 206** is not a member of the tribunal, but he is responsible for recording of all evidence and other matter formally transpiring during the proceedings before the tribunal and all other matters in connection with it.

The quorum as it appears in the judgment of the trial tribunal is as hereunder quoted;

..... MWENYEKITI,KATIBU.

Therefore, the list of the members as it appears from the trial tribunal records as pointed herein above, is without doubt and satisfies this court

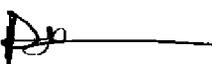
that the trial tribunal did not properly constituted when participated in the proceedings, when composed, delivered and signed the decision.

Having discussed above, this court nullifies all proceedings and decisions of the trial tribunal for the lack of legal requirement of tribunal composition and as well appellate tribunal proceedings and decision for acting on the decision of the trial tribunal which is bad in law.

It is from the trial tribunal record that the appellant claims that the respondent invaded eight (8) footsteps of her land in a year 2017, a land she bought in a year 1996 cannot stand in the above scenario.

The appeal has no merit. The same is hereby dismissed in its entirety with no order as to costs. Any party if so wishes may institute a fresh suit in the trial tribunal.

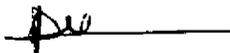
Order accordingly.


D.E. MRANGO
JUDGE
24. 02. 2020

Date - 24.02.2020
Coram - Hon. D.E. Mrango – J.
Appellant } Both Present in persons
Respondent }
B/C - Mr. A.K. Sichilima – SRMA

COURT: Judgment delivered today the 24th day of February, 2020 in presence of both the parties in persons.

Right of appeal explained.


D.E. MRANGO
JUDGE
24.02.2020