

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MOSHI

AT MOSHI

MISCELLANEOUS LAND CASE APPEAL NO. 09 OF 2019

(From the Decision of the District Land and Housing Tribunal of Moshi District at Moshi in Land Case Appeal No. 37 of 2018 and Original Ward Tribunal of Romu Ward in Application No. 08 of 2018)

NURU KASSIM SWAI.....APPELLANT

VERSUS

RASHIDI NURU MBATA.....RESPONDENT

JUDGEMENT

Last order: 26/05/2020

Date of Delivery:28/08/2020

MWENEMPAZI, J:

The appellant is aggrieved by the decision of the District Land and Housing Tribunal of Moshi at Moshi delivered on the 21st May, 2019. He has filed this appeal and has raised four grounds of appeal as follows:

1. That the trial Chairman of the District Land and Housing Tribunal misdirected himself when deciding that the Tribunal Secretary has to

form part of the Coram as member of the tribunal and has the right to sign and stamp the Judgement of the Ward Tribunal contrary to the law.

2. That, the Trial Chairman of the District Land and Housing erred both in fact and in law when failed to ascertain that the Respondent's Application was time barred, for the Appellant used the suit land for more than 12 years from the year 1995 without any disturbances.
3. That the trial Chairman of the District Land and Housing Tribunal erred in law when deciding that the Coram for the Ward Tribunal was sufficient enough contrary to the law.
4. That the Judgements of the Ward Tribunal and District Land and Housing Tribunal contain irregularities which are incurably fatal under the law.
5. That this Appeal is in time.

The appellant prays that this appeal be allowed with costs and the Ward Tribunal and District Land Housing Tribunal Judgements, proceedings and orders made thereto be quashed and set aside and orders the matter be held de novo in the Court/Tribunal with competent jurisdiction.

The hearing of the appeal was ordered to be disposed by way of written submission. The appellant is being represented by Mr. Gideon Baltazar Mushi, learned advocate and the Respondent's submission was prepared by Mr. Omary Burhan Gyunda, learned advocate.

It will be of assistance to have a brief look at the history of the matter at hand. In the Ward Tribunal of Romu, the Respondent filed an application

against the appellant herein claiming for a farm(shamba) with 70 paces to 30 paces which was to the appellant so that he may farm and in return take care of the respondent. Instead the appellant has been insulting and abusing the respondent thus he decided to claim back his peace of land. In the Ward Tribunal of Romu, the decision was made in favour of the respondent. The appellant filed an appeal in the District Land and Housing Tribunal where the appeal was dismissed. This is the second appeal.

In regard to the first ground of appeal, that the secretary to the tribunal signed and stamped the judgement of the ward tribunal contrary to the law and therefore he was endorsed to be part of the quorum by the Chairman of the District Land and Housing Tribunal, the counsel has cited **section 11 of the Land Disputes Courts Act, Cap. 216 R.E. 2002** and section 4 of the **Ward Tribunals Act, Cap. 206 R.E 2002**, and argued that the presence of the Seal of the Secretary of the Ward Tribunal in the Judgement is sufficient reason to prove that the secretary participated as a member in the Coram of the Tribunal. That renders the whole proceedings, judgement and orders thereto a nullity. The signing in the judgement by secretary of the Ward Tribunal is contrary to the law. To support his argument the counsel has cited the case of **Nada Qori versus Isaki Gilba, Miscellaneous Land Appeal No. 2 of 2013, High Court of Tanzania, Arusha(unreported)** where Hon. S. E. Mugasha(as she then was) observed as follows:

"A Secretary is not a member of the Ward Tribunal but an employee of the Local Government Authority. In the circumstances, as the decision is signed by the secretary, the same is tantamount to the

disputed being determined by the Secretary who is not a member of the Ward Tribunal and such decision is illegal”

The Counsel has submitted further that the act of signing of the judgment implies that the secretary was part of the Coram in the decision making. The Signature of the Chairman and presiding members only would have been sufficient to legalize the said judgment. The Counsel for the appellant has prayed that the Ward Tribunal’s judgment be quashed and set aside for being signed by the secretary of the Ward Tribunal.

The respondent in reply has submitted that the submission by the counsel for the appellant has no merit. The respondent has submitted further that the trial tribunal had five members who signed in the judgement. None of them signed as a secretary. However, below the list of members who had formed the quorum and signed, that is where there is a signature of the secretary. That is intended to authenticate the copy of the decision. Since the secretary is the author of the document, he or she is entitled to sign and stamp the document for authenticity. Besides the submission above, the provisions of *section 45 of the Land Disputes Courts Act, Cap. 216* provides for the shield over the decision of the Ward Tribunal or DLHT not to be reversed or altered on account of error, omission or irregularity in the proceedings before the or during hearing.

The respondent has further argued that the case of **Nada Qori Vs. Isaki Gilba(supra)** is distinguishable and overtaken by the enactment of *Written Laws(Miscellaneous Amendment)(No. 3) Act, 2018[Act No. 8 of 2018]* and the decision in the case of **Yakobo Magoiga Kichere versus Peninah**

Yusuph, Civil Appeal No. 55 of 2017 CAT at Mwanza where the court held that *"the law requires the courts to deal with cases justly, and to have regard to substantive justice...and cut back overreliance on procedural technicalities."*

The respondent prays that the first and third ground of appeal be dismissed as they are baseless.

The provisions of section 11 of the *Land Disputes Courts Act, Cap. 216 R.E 2002* provides for the composition of the Ward Tribunal. That, it shall consist of four members at the minimum to eight (8) members at the maximum and three among them shall be women. These are selected from the members of the ward by the Ward Committee. It provides 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 Tribunals Act *.*

At the sitting for mediation, according to section 14(1) of the Land Disputes Courts Act, Cap. 216 R.E.2002 it shall consist of three members. The provisions read:

"The Tribunal shall in all matters of mediation consist of three members at least one whom shall be a woman"

And section 4(3) of the ***Ward Tribunals Act, Cap. 206 R.E.2002*** provides for the number of members at each sitting in dispute resolution. *"The quorum at a sitting of a Tribunal shall be one half of the total number of members."* According to section 6(3) of the Ward Tribunals Act, Cap. 206

R.E.2002 the Secretary is not a member of the Ward Tribunal. The provision reads:

6(3). Appointment to the office of Secretary shall be permanent in the service of the Local Government Authority within which the Tribunal to which he is appointed to be Secretary is situated.

Obviously, the secretary cannot participate in decision making and is not counted in the list of members.

In this case, I have read the record of then decision of the Ward Tribunal of Romu. Members have listed their names, position and signed against their name at the position corresponding to the names. Down the list the secretary and chairman have signed and stamped the stamps showing their position. That, in my view, cannot be said to participate in the decision making. It is very clear; the chairman has signed twice. As a chairman in the quorum and again to approve the document in the manner done by the secretary. I have the opinion, no injustice has been occasioned as to warranty any complaint. Under the circumstances the quorum was proper in law and the secretary did not participate in the decision making. The first ground and third ground of appeal fails and is accordingly dismissed.

On the second ground of appeal the appellant allege the suit or application in the Trial Tribunal was time barred. According to the appellant, he had in possession of the dispute land since 1995 uninterrupted hence he was protected by the Law of Limitation Act, Cap. 89 R.E.2002. In the argument of the counsel for the appellant, it was established during the hearing at page 14 of the Ward Tribunal's Proceeding, which eventually

wasn't disputed, that the appellant was handed over the suitland on the 3rd February, 1995. The respondent filed an application in the Ward Tribunal of Romu Ward in May, 2018. That is 23 years; way far out of time according to the counsel. ***Part I item 22 of the Law of Limitation Act, Cap. 89 R. E. 2002*** provides for time limit for recovery of land to be twelve (12) years.

The respondent in reply has submitted that the appellant has failed to prove that he was in possession of the suit land for all years without interruptions. The allegation that he was given the piece of land on the 3rd February, 1995 has not been proved nor corroborated by any credible evidence. Witnesses were inconsistent in their testimonies and their evidence contradicted each other. Example, Hadija Kasim Swai testified that she does not know the history of the dispute land. Abdul Kassim Swai testified that there was no clan meeting convened to handover the suit land to the appellant. Hija Awadi Munini testified that there was a written document of hand over the suit land to the appellant, and that was not tendered in court as an exhibit.

On the findings of fact, this court is not entitled to evaluate evidence afresh and make its own finding of facts only when there are misdirections or non-direction by the first appellate court or tribunal. It was held in the case **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A.H Jariwala t/a Zanzibar Hotel** [1980] T.L. R 31 where at page 32 we said:

"Where there are concurrent findings of facts by two courts, the Court of Appeal, as a wise rule of practice should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, a

miscarriage of justice or violation of some principle of law or procedure."

In this case, the impugned judgment shows clearly, the Honourable Chairperson had a chance to evaluate the evidence in order to satisfy as to whether the application in the trial Tribunal was time barred. It is recorded at page 2-3 of the judgment of the DL&HT that: -

"...I noted from the proceedings of the trial tribunal that the appellant's evidences contradict Hadija Kasim Swai at page 21 of the proceedings (who) testified that she does not know the historical background of the disputed land. Abdul Kassim Swai on page 23 of the tribunal proceedings testified that there was no clan meeting convened while Hija Awadi Mnisi on page 29 of the proceeding testified that there was a written documents (Waraka) evidencing the handover of the suit land to the appellant. Worse still the evidence of Abduli Kassimu Swai was a hearsay evidence as adduced on page 25 of the proceedings of the Ward Tribunal that when the appellant was handed over the land was absent; it was a hearsay."

Though, I could not find the conclusion, I have understood that failure to establish the exact time the appellant came into possession of the land had made it difficult to agree to the allegation that the application was time barred. There were material contradictions to the testimony of the witnesses for the appellant as to render their testimony not credible. When weighed against the evidence by the witnesses for the Respondent it is clear that their testimonies were firm and consistent and therefore credible. The Ward

Tribunal was seized with the jurisdiction to determine the matter as the application was within time. I also do hold the same position that the Ward Tribunal had jurisdiction to determine the application as it was within time. In absence of clear and firm evidence as to the time the appellant came into possession of the Suitland, it is difficult to say for sure it was 3/2/1995.

I do agree, also to the submission of the Respondent that the proceedings and the decision of the Ward Tribunal had no irregularities material as to warrant this court to disturb the decision and conclusion arrived at by both lower Tribunals. Under the circumstances this appeal has no merit; and, is accordingly dismissed with costs.

It is ordered accordingly.




T.M. MWENEMPAZI
JUDGE
28/08/2020

Judgement delivered in court in the presence of the appellant and absence of his advocate. The respondent is reported sick by relative Nassibu Athumani Swai. It is delivered this 28th day of August, 2020.


T.M. MWENEMPAZI
JUDGE