

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

**MISCELLANEOUS LAND CASE APPEAL NO 52 OF 2020**

*(Arising from the District Land and Housing Tribunal of Musoma at Musoma in Land  
Appeal No 86/2019 and Originating in the Ward Tribunal of Kebanchebanche in  
Application No 01 of 2019)*

**WAMBURA NYAHIRI.....APPELLANT**

**Versus**

**RYOBA NDERA ..... RESPONDENT**

**JUDGMENT**

*11<sup>th</sup> August & 11<sup>th</sup> September, 2020*

**Kahyoza, J.**

**Ryoba Ndela** sued **Wambura Nyahiri** for invading his land before the Ward Tribunal. **Ryoba Ndela** and **Wambura Nyahiri** did not give evidence explaining how each one obtained land in question and call witnesses to support him before, the ward tribunal. They narrated what happened to the first case. It is worth-noting that prior to the case which is subject of this appeal, **Wambura Nyahiri** had sued **Ryoba Ndela** before the ward tribunal for trespass. The matter went up to the High Court. The High Court ordered a retrial. In compliance with the High Court order, **Ryoba Ndela** instituted the matter before the ward tribunal against **Wambura Nyahiri**.

The only evidence in the record of the ward tribunal are copies of letters of allocation of land to the parties including the disputed land by

the village land committee. The ward Tribunal based on the evidence on record deliberated on the matter. Two members opined in favour of **Ryoba Ndela**. One member opined in favour of **Wambura Nyahiri**. The **chairperson** of the tribunal who was a participating member directed the disputed land to be divided to the parties. She introduced a new boundary.

Aggrieved, **Ryoba Ndera** appealed to the District Land and Housing Tribunal (**DLHT**). The **DLHT** quashed the decision of the ward tribunal on the ground that there was no judgment of the ward tribunal as the chairperson of the ward tribunal turned her own opinion into a judgment of the ward tribunal. The **DLHT** declared **Ryoba Ndera** the owner of the disputed land basing on the opinion of two members of the tribunal.

Dissatisfied, **Wambura Nyahiri** instituted the appeal to this Court from the decision of the **DLHT** raising three grounds of appeal and the respondent filed his reply. The Court heard the appeal.

In the course of hearing, this Court found that the **DLHT** did not read the opinion of assessors in the presence of the parties. It invited the parties to address the it on that issue. The appellant confirmed that the tribunal did not read the opinion of the assessors to the parties. The respondent a lay person had nothing to contribute.

Given the above account of things there is no doubt that there were procedural irregularities at both level of the tribunals. The first irregularity is pointed in the second ground of appeal, that is whether the decision of ward tribunal was made according to law. The second

irregularity is the one pointed out by this Court, whether the **DLHT** heard appeal with aid of assessors as required by law.

**Was the decision of the ward tribunal made in accordance with the law?**

The appellant contended in the second ground of appeal that the **DLHT** erred to hold that the ward tribunal chairperson divided the disputed land to the parties and that majority members had found for respondent, which was in total disregard of the fact that there were equal votes and where there is no majority decision the law confers powers to the chairperson to exercise his casting vote in addition to his original vote.

The respondent did not reply the second ground of appeal.

I resolved to review the record of the ward tribunal. The record is clear. Two members opined in favour of **Ryoba Ndela**. One member opined in favour of **Wambura Nyahiri**. The **chairperson** of the ward tribunal directed the disputed land to be divided between the parties. Thus, she introduced a new boundary. Unlike what the appellant's advocate advanced, the chairperson did not vote first and apply her casting vote. Had she applied her casting vote she would have decided the matter to one of the parties and not to subdivide the dispute land.

Even, if, I agree with the appellant's advocate that the chairperson exercised her casting vote, the issue is whether she had a casting vote. The law is unambiguous. The chairperson has a casting vote when the ward tribunal sits to a land mediate disputes and not when it is

adjudicating a matter. See section 14 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019]. Section 14 states-

*14.-(1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.*

*(2) The Chairman to the Tribunal shall select all three members including a convenor who shall preside at the meeting of the Tribunal.*

*(3) In the event of the equality of votes, the member presiding shall have a casting vote in addition to his deliberative vote.*

*(4) The Ward Tribunal shall, immediately after settlement of a dispute record the order of mediation.*

In this case, the ward tribunal was not sitting to mediate the dispute. It was sitting as an adjudicating tribunal. For that reason, the chairperson had no such powers.

I am of the firm view that the ward tribunal's proceedings from which the current appeal stems was marred with fatal procedural irregularity. The decision of the ward tribunal was reached in disregard of logic. It was logical that the decision ought to have been that of the majority. The chairperson acted as an adjudicator who is not bound by the opinion of the members of the ward tribunal. She had no such power under the law.

In the upshot, I find that the proceedings before ward tribunal and the subsequent judgement a nullity. I would have ended at that and proceed to quash the proceedings and set aside the judgment of the ward tribunal. However, I find myself compelled to discuss the issue raised by the Court *suo motu* to enlighten the **DLHT**.

**Did the DLHT hear the appeal with aid of assessors as**

## **required by law?**

The **DLHT**'s record shows that it heard the parties on appeal on the 19/2/2020. On that date, the **DLHT** fixed a date for assessors to give opinion and for delivering its judgment. On the date fixed, that is 19/3/2020, the **DLHT** delivered its judgment. The chairman omitted to invite the assessors to read the opinion in the presence of the assessors.

There is no doubt that the law as it stands, requires the chairman to sit with not less than two assessors and also it casts a duty to the assessors to give their opinion in writing before the chairman reaches a judgment. Section 23 (1) of the **Land Disputes Courts Act**, [Cap 216 R.E. 2002] (Cap. 216, provides that-

*23.(1) The District Land and Housing Tribunal established under section 22 shall be composed of one Chairman and not less than two assessors.*

*(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to **give out their opinion before the Chairman reaches the judgement.***

It is also trite law from case law, that the chairman has to invite the assessors to read the opinion in the presence of the parties before the chairman delivers a judgment. Once a chairman of the DLHT omits to invite the assessors to read their opinion to the parties, the omission is fatal and renders a trial or the proceedings of an appeal a nullity. The omission renders the trial or hearing of an appeal without aid of assessors. It does not matter whether or not the assessors wrote their opinion and the chairman considered the opinion in the judgment. The



Court of Appeal has made that position clear in a number of its decisions, such as **Tubone Mwambeta v. Mbeya City Council**, Civil Appeal No.287 of 2017 (CAT unreported), **Edina Adam Kibona V Absolom Swebe** CIVIL APPEAL NO. 286 OF 2017 CAT (Unreported) and **Sikuzani Saidi Magambo and Kirioni Richard v. Mohamed Roble** Civil Appeal No. 197 of 2018 (CAT Unreported) a few to mention.

In the instant case, the chairman of the **DLHT** omitted to read the opinion of the assessors to the parties before he delivered the judgment. The omission rendered the proceedings and its subsequent judgment a nullity.

Before I give my verdict let me point out that the parties' dispute has been in the courts and tribunal for quite some time and it is not yet over. Given the nature of the evidence. It will be hard to get a solution in the tribunal or the courts of law. The parties' evidence is that the disputed land was allocated to them by the village land committee. I wonder if there is a lawful owner of the disputed land. between the parties. They may wish to go through the provisions of section 8 of the Village Land Act, [Cap.114 R.E. 2002]. I have reproduced the relevant sub-sections as follows-

*8.-(1) to (3) N/A*

*(4) A village council may establish a committee to advise and make recommendations to it on the exercise of any of the functions of the management of village land but, not withstanding the provisions of section 110 of the Local Government (District Authorities) Act \*(19) **such committee***

***shall have no power to take any decisions concerning the management of village land.***

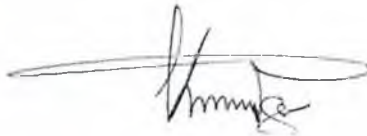
***(5) A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly. (emphasis is added)***

Should the parties be properly advised, they may seek a solution from the village authorities with mandate to allocate land.

The above said and done, I now invoke the powers of revision under section 43 of the **Land Disputes Courts Act**, [Cap 216 R.E. 2019] to quash the proceedings and set aside the judgment of the ward tribunal and the district land and housing tribunal. I order the ward tribunal to hear the case *de novo*. *The composition of the ward tribunal to re-hear the dispute shall be at least seven members and the convenor*, notwithstanding the fact that any of such members may previously have been involved in determining the parties' case. The secretary should properly record the evidence and the parties be advised to call witnesses.

Each party shall bear its costs as the matter there is no one to blame.

It is ordered accordingly.

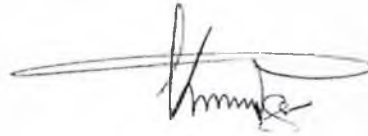


**J. R. Kahyoza**

**JUDGE**

**11/9/2020**

**Court:** Judgment to be delivered by the Deputy Registrar.



**J. R. Kahyoza, J.**  
**11/9/2020**

**Court:** Judgment delivered in the presence of appellant and in the absence of the respondent. J/A Mr. Mofuga present.



**M.A. MOYO**  
**DEPUTY REGISTRAR**  
**11/9/2020**