

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

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 65 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 55 of 2019 which originated from the decision of the Nyakato Ward Tribunal in Application No. 65 of 2018)*

**ALEXANDER MASHAURI ..... APPELLANT**

**VERSUS**

**DIONIZI NYAORO ..... RESPONDENT**

**JUDGMENT**

*4<sup>th</sup> August and 30<sup>th</sup> October, 2020*

**KISANYA, J.:**

In the Nyakato Ward Tribunal, the respondent was sued for trespassing to the appellant's land. When he was called on to cross-examine the appellant, he raised a preliminary objection on point of law that, the trial tribunal had no jurisdiction to try the matter on the reason that, the land in dispute was above three million shillings. The trial tribunal did not dispose of the preliminary objection. It went on to decide the matter in favour of the appellant.

Following an appeal lodged before the District Land and Housing Tribunal for Mara at Musoma (the appellate Tribunal), the decision was of the trial tribunal was quashed and set aside. Thus, the appellate tribunal declared the respondent as lawful owner of the disputed land. Its decision was based

on the point of law that, the matter filed before the Ward Tribunal was time barred.

In order to challenge the said decision, the appellant has come to this Court by way of appeal. He registered the following grounds of appeal:

- 1. That the trial tribunal erred in law and fact for deciding that the case filed by the appellant is time barred.*
- 2. That the tribunal erred in law and fact for failure to consider that, the respondent refused to give evidence and claiming that the land in dispute has value of more than three millions.*
- 3. That the trial court erred in law and fact for failure to consider the appellants evidence.*
- 4. That the tribunal erred in law and fact for failure to consider that there is no Respondent land in the land in dispute.*

When the matter was called on for hearing on 4<sup>th</sup> August, 2020, Messrs. Edson Philipo and Gervas Emanuel, learned advocates appeared for the appellant and respondent respectively. In the course of composing the judgment, I noted irregularities in the proceedings of the Ward Tribunal which were not addressed during the hearing. The said irregularities gave rise to the following issues:

- (a) Whether the Ward Tribunal had pecuniary jurisdiction to entertain the matter. It was noted that this issue was raised before the trial Tribunal and first appellate Tribunal but not decided.
- (b) Whether the Ward Tribunal was properly constituted. This was after noting that, the proceedings do not show members of the Ward

Tribunal who were present at the hearing of the land complaint filed by the appellant.

Therefore, I found it pertinent to recall the parties to address me on the above issues. This was after considering that, the proceedings and decisions of the Ward Tribunal and appellate Tribunal might have been vitiated by the said irregularities.

In his submission, Mr. Phillipop argued that, the Ward Tribunal was not properly constituted as the proceedings do not disclose the coram of members who heard the application. He was of the considered view that, the said omission violated section 11 of the Land Disputes Courts Act, Cap. 216, R.E. 2002 (the LDCA). On the issue of pecuniary jurisdiction of the Ward Tribunal, Mr. Philipop argued that, the value of the land in dispute was not ascertained for purposes of determining whether the Ward Tribunal had jurisdiction to entertain the matter.

As regards the proceedings of the first appellate tribunal, Mr. Philipop argued that, the same was vitiated because the opinion of assessors was not read in the presence of the parties as required under section 23(1) and (2) of the LDCA and regulation 19(1) (2) of the Land Disputes (District Land and Housing Tribunal) Regulations, 2003. The learned counsel stated further, that the first appellate tribunal decided the appeal on the ground of time limitation while the parties was not heard on that issue. For the foresaid reasons, Mr. Philipop urged me to nullify the proceedings of the Ward Tribunal and first appellate Tribunal and set aside the judgment and orders arising thereto.

Responding, Mr. Gervas was in agreement with Mr. Philip that, the proceedings of the Ward Tribunal do not show whether it was constituted in accordance with the law and that, it was not established as to whether the Ward Tribunal had pecuniary jurisdiction to determine the matter. As to the opinion of assessors, Mr. Gervas argued that, the opinion was read in the presence of the parties. He also conceded that, the parties were not heard on the issue of time limitation which was determined by the first appellate Court.

I have carefully considered that the parties' submission and the evidence on record. In my opinion this appeal can be disposed of by considering the first ground of appeal and the issues raised by the Court suo motu.

Starting with the first ground of appeal, the judgment of the first appellate tribunal tells it all. The appellate Tribunal quashed the decision of the trial tribunal on the reason that, the application before the Ward Tribunal was time barred. However, as rightly argued by both parties, the issue of time limitation was not raised by any party. It was neither stated in the petition of appeal nor addressed by the parties. That issue was raised by the Court, suo motu basing on the evidence adduced by the appellant before the trial court. I understand that, the law is settled that, the issue of time limitation can go to the root of the case and that, it cannot be raised at any time. However, in the circumstances where the same is raised by the Court suo motu, it is pertinent to call the parties and hear them before making a decision on it. The reason is simple. Every person is entitled to right to be heard before any decision which affect him is made. This is provided under article 12(6)(a) of the Constitution. Therefore, upon finding that, the matter

was time barred, the appellate Tribunal was duty bound to hear the parties before making its decision. That reason in itself sufficient to nullify the proceedings in the appellate tribunal.

However, there other irregularities which vitiated the appeal. As rightly submitted by the learned counsel for both parties, a ward tribunal is properly constituted by not less than four and not more than eight members whereby three members are required to be women. This is provided for under section 11 of the LDCA and section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002. The issue of composition is required to be observed at every sitting of the Ward Tribunal. It is for that reason that, the proceedings have to show the coram of members present at each sitting. That way, it can be determined whether the Ward Tribunal was properly constituted.

In the matter at hand, the application was heard on 18/01/2019. However, members of the ward tribunal present on that day are not reflected in the proceedings. Therefore, it is not clear as to whether the Ward Tribunal was properly constituted. It is also not known as to whether members who heard the parties on 18/01/2019 are the same members who participated in making decision on 5/02/2019. In the case of Mariam **Madali vs Hadija Kihemba**, Misc. Land Appeal No. 16 of 2019, HCT Land Division at DSM, this Court (Mango, J), underscored the need of compliance with section 11 of the LDCA when it held:

*"... composition of the tribunal is not a mere procedural issue, it is in fact a determining factor as whether, the institution that adjudicated the matter was really a Ward tribunal within the meaning of section 11*

*of Cap. 216 or something else. Tribunal must ensure that they are properly constituted when adjudicating cases because failure to that reduces their status as ward tribunals legally unknown institution."*

Since, the proceedings do not show members who were present at the hearing of the application, this Court cannot guess as to whether the Ward Tribunal was properly constituted.

The last issue is in relation to the pecuniary jurisdiction of the Ward Tribunal. It is on record that, this issue was raised by the respondent before the Ward Tribunal and appellate tribunal. He was of the view that, the Ward Tribunal had no pecuniary jurisdiction to entertain the application. However, neither the Ward Tribunal nor the appellate tribunal addressed this issue. In terms of section 15 of the LDCA, the jurisdiction of the Ward Tribunal is limited to the land or property valued at three million shillings. It is trite law that, the issue of jurisdiction can be raised at any stage including appellate stage as held in **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported).

Since the issue of jurisdiction is fundamental, the Ward Tribunal was required to satisfy itself on whether it had power to determine the matter. Reading from the record, the value of the land in dispute was not stated in the complaint lodged by the appellant. Further, it was not stated in the evidence adduced by the appellant. Therefore, it is not clear whether the Ward Tribunal entertained the matter which is within its mandate.

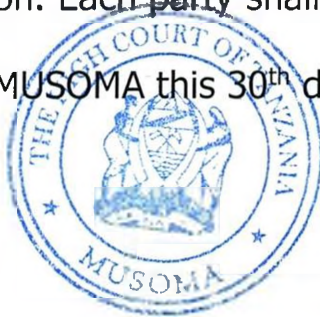
In view thereof, I find that the above named irregularities vitiated the proceedings before the Nyakato Ward Tribunal and the first appellate



Tribunal. Hence, I find no reasons to consider other grounds and irregularities found in the proceedings of the appellate tribunal

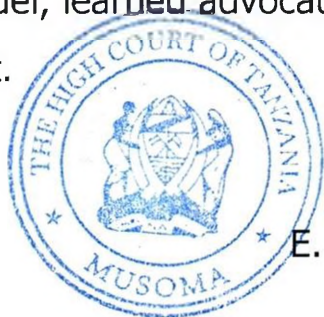
That said and done, I am inclined to exercise the revisional powers of this Court under section 43(1)(b) and (2) of the LDCA and hereby nullify the proceedings and quash the judgments and subsequent orders made by the Nyakato Ward Tribunal in Land Application No. 65 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Appeal No. 55 of 2019. Any party who is still interested to pursue the matter is at liberty to institute a fresh case before a tribunal with competent jurisdiction, subject to the law of limitation. Each party shall bear its own costs. It is so ordered.

Dated at MUSOMA this 30<sup>th</sup> day of October, 2020.



  
E. S. Kisanya  
JUDGE  
30/10/2020

Court: Judgment delivered in Chamber this 30<sup>th</sup> day of October, 2020 in the presence of Mr. Edson Philipo, learned advocate for the appellant and Mr. Gervas Emanuel, learned advocate for the respondent. B/C Charles Mgeta-SRMA present.



  
E. S. Kisanya  
JUDGE  
30/10/2020