

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

AT MUSOMA

MISCL. LAND APPEAL NO. 64 OF 2020

(Arising from the decision of the District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 58 of 2019 which originated from the decision of the Nyakato Ward Tribunal in Land Application No. 62 of 2018)

ALEXANDER MASHAURI APPELLANT

VERSUS

REGINA WILLIAM RESPONDENT

RULING

22nd and 22nd October, 2020

KISANYA, J.:

This appeal traces its genesis from Land Application No. 62 of 2018 lodged by the appellant, Alexander Mashauri before the Nyakato Ward Tribunal (hereinafter referred to as the "Ward Tribunal"). The appellant claimed that, the respondent, Regina William had trespassed to his land. The respondent refused to give her evidence on the reason that, she was representing his husband. In its judgment, the Ward Tribunal decided the matter in favour of the appellant and declared him as lawful owner of the disputed land. The respondent successfully appealed to District Land and Housing Tribunal for Mara at Musoma in Appeal No. 58 of 2019. The first appellate Tribunal held that, the application filed by the appellant in the Ward Tribunal was time barred. It is that decision which led to the present appeal.

As I was going through the original record of the Ward Tribunal, I noticed that, the members who heard the application are not reflected in the proceedings. In that regard, when this matter was called on for hearing today, I found it pertinent to ask the parties to address first on whether the Ward Tribunal was properly constituted.

At the hearing of this matter, the appellant was represented by Mr. Edson Philip, learned advocate while Mr. Gervas Emanuel, learned advocate appeared for the respondent.

Submitting in respect of the issue raised by the Court, both counsel argued that, the Ward Tribunal was not properly constituted. Their argument was based on the fact that, the coram is not reflected in the proceedings of the Ward Tribunal thereby contravening section 11 of the Land Disputes Courts Act, Cap. 216, R.E. 2002 (the LCDA). It was further submitted by both counsel that, the said irregularity vitiated the proceedings and judgment of the Ward Tribunal and first appellate Tribunal. Both learned counsel went on to move the Court to nullify the proceedings and make the necessary orders for the interests of justice. Mr. Gervas asked the Court to order that, the respondent's husband wife be joined in the subsequent proceedings. He also prayed for costs. However, Mr. Philipo was of the view that, costs should not be awarded due to the circumstances of the case and that, the appellant is entitled to sue a person who trespassed to his land.

I have considered the above submissions made by both parties and the evidence on record. As rightly argued by both counsel, the issues raised

by the Court is premised on the provision of section 11 the LCDA which reads:

"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.

In the light of the above provision read together with section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002, a ward tribunal is properly constituted by not less than four nor are more than eight members. Again, three members thereto must be women. Any application heard or determined by the Ward Tribunal which is not properly constituted cannot be allowed to stand. The issue whether or not the Ward Tribunal was properly constituted is addressed by looking at the proceedings of the respective tribunal. It is expected of the proceedings to indicate the name of the members present at every sitting of the Ward Tribunal. It is not enough to show or append the said names to judgment. It is my considered view that, judgment cannot be used to determine members of the Ward Tribunal who participated in hearing the application. This is especially when it is taken into account the date of hearing and date of judgment may not be the same.

In the present case, the Ward Tribunal sat to hear the appellant's case on 18/01/2019. When the respondent was called on to cross examine the appellant, she informed the Tribunal that, she had no mandate to represent her husband. The judgment was not given on the same day. It was delivered on 5/02/2019. The Ward Tribunal's decision was based on the evidence adduced by the appellant on 18/1/2019 and evidence

collected after visiting the locus in quo. However, the proceedings do not show the members who were present when the application was called on for hearing on 18/1/2019. Also, members who visited the locus in quo are not known. The proceedings do show whether the Ward Tribunal visited the locus in quo and findings thereto. That fact is only reflected in the judgment.

It is my considered view that, composition of the Ward Tribunal in determining the case at hand is not clear. Composition of the Ward Tribunal is not a procedural matter but a legal issue. As rightly argued by Mr. Philipo and Mr. Gervas, failure to observe composition of the Ward Tribunal as in the matter at hand vitiates the proceedings, judgment and orders of the ward tribunal and appeal arising thereto.

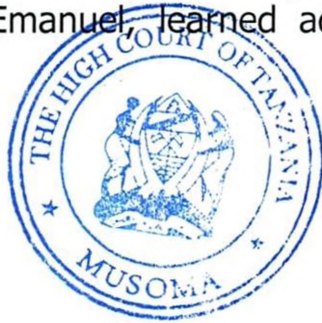
For the foresaid reasons, I am inclined to revise the proceedings in lower tribunals under section 43(1)(b) and (2) of the LDCA and hereby nullify the proceedings and quash the judgments and orders of the Nyakato Ward Tribunal in Land Application No. 62 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Appeal No. 58 of 2019. If any party is still interested to prosecute the matter is at liberty to institute a fresh case before the tribunal with competent jurisdiction. Since the issue which has disposed of this matter was raised by the Court, suo mottu, I make no order as to costs. It is so ordered.

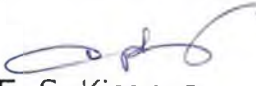
Dated at MUSOMA this 22nd day of October, 2020.




E. S. Kisanya
JUDGE

Court: Ruling delivered in Chamber this 22nd 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 Mariam present.




E. S. Kisanya
JUDGE
22/10/2020