

**IN THE HIGH COURT OF TANZANIA  
(DOODOMA REGISTRY)  
AT DODOMA**

**MISC LAND APPEAL NO. 47 OF 2020**  
(arising from Misc. Land Application No. 65 of 2019  
original Goima Ward Tribunal)

**BETWEEN**

**PETRO BIRA CHATO..... APPELLANT**

**VERSUS**

**HIMA HUDU UBAYA.....RESPONDENT**

**JUDGEMENT**

**Mansoor, J**

**Date of JUDGEMENT: 23<sup>rd</sup> October 2020**

The dispute is over 4 ½ acres of land situate at Mirambo Village in Goima Ward in Chemba District, Dodoma Region. The Appellant claims that this land is his land and he has occupied it for 35 years from 1972, and he has been leasing it out to people, and from 1972 till 1981, he leased this land to Mzee Siloti Jumbe. The respondent also claims that she and her husband cleared the virgin land in 1970. She claims that

they have been using this land for farming since 1971. The respondent claims that in 2013, the appellant hired the land from the respondent, and the lease was extended to 2014. That she leased the land to the appellant for her husband needed treatment and she expended the money for her husband eyes treatment in Dodoma. In 2015, the respondent did not want to renew the lease, and this is when the Appellant started claiming that the land is his. The respondent decided to sue the appellant at the Ward Tribunal for Goima. The Appellant herein won the case, and the land was declared his land. The respondent appealed to Kondoa District Land and Housing Tribunal. The District Land and Housing Tribunal nullified the proceedings and judgement of the Goima Ward Tribunal because the appellant herein did not have the letters of administration. The First decision of the District Land and Housing Tribunal is dated 31/03/2017.

The appellant initiated the processes of getting appointed as the administrator of the estate as advised by the District Tribunal. The respondent instituted another case at the Ward

Tribunal against the appellant in the appellant's own capacity. The case at the Tribunal was heard and determined exparte. The case was initiated by Hima Hindu, the respondent herein on 20<sup>th</sup> July 2017, Case No. 07/07/2017. The case kept on being adjourned as the Ward Tribunal acknowledged that the appellant herein was making follow up for the letters of administration. On 17/08/2017, the Ward Tribunal gave the deadline to the appellant to complete the process of the probate. They adjourned the case to 24<sup>th</sup> August 2017. The case was again adjourned to 31<sup>st</sup> August 2017 to enable the appellant herein to complete the probate and the administration cause and be given the letters of administration. The case was again adjourned to 04/09/2017 for the same reasons. After several adjournments, the case was heard exparte, and the Ward Tribunal gave its judgement in favor of the respondent on 23/11/2017. Almost two years later i.e. on 12<sup>th</sup> September 2019, the appellant filed an application at the District Land and Housing Tribunal praying for an extension of time to set aside the exparte judgement. He applied under section 14 (1) of the Law of Limitations Act, Cap

89 R: E 2002 and Section 95 of the Civil Procedure Code, Cap 33 R: E 2002. The reasons for delay are stated in paragraph 7 of the affidavit of the appellant, that he did not know what to do after the decision was pronounced, and the delay was not out of negligence. The application was dismissed by the District Land and Housing Tribunal hence this appeal.

The first question that came to my mind is whether the Ward Tribunal can hear and determine cases *ex parte*. To answer this question, I had to go through the Courts (Land Disputes Settlement) Act, Cap 216 R: E 2002. In the Act, the primary functions of the Ward Tribunal are to mediate parties to reach an amicable settlement, and therefore to enhance peace and harmony. Section 13 of Cap 216 provides:

13.-(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunals Act, 1985, the primary function of each Tribunal shall be to secure peace and harmony, in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.

Peace and harmony cannot be secured if only one party is afforded a chance of hearing, also mediation cannot be conducted in the absence of the other parties to a dispute and this is why the Ward Tribunals were not given jurisdiction to adjudicate and hear the cases *ex parte*, in the absence of the other party.

Under Section 13 (2) of the Ward Tribunal Act, 1985, the Ward Tribunals are permitted to adjourn cases to some date which it may specify and inform the appropriate authority of the absence of the person complained against. The appropriate authorities have been defined in the Act to mean the District Councils or the Urban Councils under which the Ward Tribunals have been established. This section 13 (2) of the Ward Tribunals Act, reads:

section 13(2)                    if on the date specified in the summons the complainant does not without reasonable cause, appear, the Tribunal shall dismiss the complaint, and it shall not subsequently be brought before it; but if the Tribunal considers that the absence of the complainant is due to a reasonable cause or if the person complained against is

absent, the Tribunal shall adjourn the hearing to some date which it may specify and inform the appropriate authority of the absence of the person complained against.

If the respondent does not appear before the Ward Tribunal when the case is set for hearing, the Ward Tribunal is not vested with jurisdiction to hear and determine the cases in the absence of the respondent, and this is why both laws regulating the proceedings of the Ward Tribunals i.e. Cap 216 and the Ward Tribunals Act are silent on the procedures to be taken by the Ward Tribunals when the person complained against is absent during the adjudication of the cases. Cap 216 is silent on the procedures to be taken by the Ward Tribunal if the respondent to the case does not appear for hearing, it is also silent on the steps to be taken by the aggrieved respondent to set aside the *ex parte* judgement, and this is because the Ward Tribunals are not vested with powers to determine the cases *ex parte* and to issue an *ex parte* decree. Under the Ward Tribunals' Act, the Ward Tribunal is required to refer the matter to the appropriate Authority, and since appropriate Authority under the Land Disputes Act, Cap 216

have not been defined, the appropriate authority under the Land Disputes Act, Cap 216 would be the District Land and Housing Tribunals.

On the other hand, although the Ward Tribunal is not empowered by any of the laws to hear and determine cases exparte, and since already there is an exparte judgement issued against the appellant, the appellant ought to have either appealed against the exparte decision made by the Ward Tribunal, as section 19 of the Land Courts Act allows appeals from orders and decisions of the Ward Tribunal to the District Land and Housing Tribunal or apply for Revision. Section 19 of Cap 216 reads:

19. A person aggrieved by an order or decision of the Ward Tribunal may appeal to the District Land and Housing Tribunal.

Since he was late, he ought to have applied for extension of time to file an appeal out of time under Section 20 (2) of the Courts, Land Disputes Act, Cap 216. The District Land and Housing Tribunal would have quashed and set aside the

exparte judgement since it was passed by the Ward Tribunal in the absence of jurisdiction.

20.-(1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought.

(2) Notwithstanding the provisions of subsection (1), the District Land and Housing Tribunal may for good and sufficient cause extend the time for filing an appeal either before or after the expiration of forty-five days.

Another step which could have been taken by the appellant is to file an application for Revision of the Ward Tribunal orders or decision under section 36 of Cap 216, which provides:

36.-(1) A District Land and Housing Tribunal may call for and examine the record of any proceedings of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has

a) not contravened any Act of Parliament, or subsidiary legislation.

b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction and may revise any such proceedings.

(2) In the exercise of its revisional jurisdiction, a District Land and Housing Tribunal shall have all the powers conferred upon it in the exercise of its appellate jurisdiction.



In this case, the Ward Tribunal's decision which was passed *ex parte* indeed contravened and conflicted with the rules of natural justice, and the Ward Tribunal has exceeded its jurisdiction, and so such proceedings should have been revised.

The Appellant was wrong to apply before the District Land and Housing Tribunal for an extension of time to make an application to set aside an *ex parte* decree passed by the Ward Tribunal as an *ex parte* decree can only be set aside by the court or tribunal which passed the decree. As discussed hereinabove, he ought to have appealed against the decision as provided under section 19 of the Act or made an application for Revision under section 36 of the Act.


In either of the cases, the Ward Tribunal *Ex parte* decision which was passed contrary to the rules of natural justice, and in excess of its jurisdiction cannot remain valid, and consequently the *ex parte* decree passed by the Goima Ward Tribunal in Case No.

7/7/2017 is quashed and set aside. The case No. 7/7/2017 before Goima Ward Tribunal is restored, and hearing of the case shall start de novo.

Appeal allowed, with no orders as to costs.

**DATED AND DELIVERED AT DODOMA this 23<sup>rd</sup> Day of OCTOBER 2020**



  
**MANSOOR,  
JUDGE,  
23<sup>RD</sup> OCTOBER 2020**