

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

(LAND DIVISION)

AT TANGA

Miscellaneous Land Case Appeal no 01 of 2019

(Arising from Land Appeal no 23 of 2018 of the District Land and Housing Tribunal of Korogwe at Korogwe and a Complaint no 02/2018 at Kwachaga Ward Tribunal in Handeni District)

ABDALAMANI MOHAMEDI.....APPELLANT

VERSUS

HALIDI MOHAMEDI.....RESPONDENT

JUDGMENT

MRUMA, J.

This is the second time the Appellant is challenging the decision of the Ward Tribunal of Kwachaga at Handeni which declared the Respondent herein the lawful owner of the suit land an area measured quarter to an acre located at Tuliani Village, Kwachaga Ward in Handeni District. His first attempt to challenge it was in the District Land and Housing Tribunal for Korogwe District at Korogwe in Land Appeal No. 23 of 2018. The District

it was in the District Land and Housing Tribunal for Korogwe District at Korogwe in Land Appeal No. 23 of 2018. The District appellate tribunal dismissed his appeal and confirmed the decision of the Ward Tribunal.

At the Ward Tribunal it was the Respondent Halidi Mohamed who sued the Appellant Abdalamani Mohamed for trespass over that piece of land which he claimed to be his land. He prayed the Ward tribunal to issue an eviction order to remove the Appellant from that land. He told the Ward tribunal that initially the suit land was unoccupied and it was allocated to him by the Tuliani Village Council in 2001. Having been allocated he cleared a forest and constructed a house thereon in the same year, i.e. 2001. He said that he was surprised that after 18 years on the land, the Appellant is seeking to evict him. He called one witness, selemani Mohammed to support his case. He tendered in evidence a document purported to be an allocation letter issued by the Village Council of Tuliani Village to allocate him the land in dispute. The said letter reads:

JAMHURI YA MUUNGANO WA TANZANIA

HALMASHAURI YA KIJIKI CHA TULIANI

KAMATI YA HUDUMA ZA JAMII NA SHUGHULI ZA KUJITEGEMEA

Tarehe 25/7/2001 ndugu Mwana kijiki wa Tuliani Halidi Mohammed
kapimiwa eneo kiasi cha robo ekari.....”

Which literally meant that the Village Council of Tuliani Village did on the 25th day of July 2001, allocate to the Respondent a piece of land near a grave yard measuring quarter to an acre.

The Appellant opposed the application. He also claimed ownership of the same piece of land. He told the Ward Tribunal that he was the rightful owner of the suit land which he inherited from his fore parents. He told the Ward Tribunal that sometimes before this matter was instituted in the Ward Tribunal, the Respondent trespassed into his land and he sued him before the Village council where he was stopped from constructing a house therein but he hurriedly completed it and moved to live therein.

After hearing the parties and having visited the locus quo, the Ward Tribunal declared the present Respondent as the rightful owner of the disputed land.

Aggrieved by the decision of the Ward Tribunal the Appellant appealed to the District Land and Housing Tribunal for Korogwe in No. 23 of 2018. The gist of his complaint was that the Ward tribunal was wrong in not finding that his evidence was tighter than the Respondent because the Respondent didn't call witnesses who he claimed to have participated in allocating the land to him. He also complained that in 2001 Tuliani village was nonexistent.

After the tribunal took a similar stand as that of the Ward Tribunal and dismissed the Appellant's appeal. The District

appellate tribunal found that the evidence adduced by the Respondent was heavier than that of the Appellant and also that the Appellant barred by item 22 of the first Schedule to the law of Limitation Act, 1971 which provides for a limitation of time for redemption of land to be 12 years and that the period of 18 years the Appellant waited before taking action was beyond the time limit set by the law.

Still aggrieved with that decision the Appellant Abdallaman Mohamed, has appealed to this court challenging it on two facades namely:

- 1. That, the trial Chairman erred in law and fact by upholding the decision of ward tribunal without considering the issue of quorum*
- 2. That, the trial Chairman erred in law and facts by upholding the decision of ward tribunal without considering the concrete evidence adduced by the appellant that proves appellant's ownership in the suit land.*

At the hearing of this appeal the appellant engaged Mr. Mathias Nkingwa, learned counsel while the Respondent vented for himself, unrepresented. The matter was argued orally.

Submitting in support of the first ground of appeal the learned counsel submitted that S.4 (2) of the Ward Tribunal Act is to the effect that the Secretary of the tribunal will record the

proceedings of the tribunal only and Section 4(3) of the same Act prohibits the secretary to appear in the Coram of the tribunal. It is therefore his submission that the fact that the name of the Secretary appeared in the Coram shows that there is a possibility that he participated in decision making.

In a style the learned advocate argued a ground which was not raised in the grounds of appeal filed. He said that contrary to the requirements of Section 11 of the Land Disputes Courts Act, the Coram didn't show genders of members who participated. On this point he referred this court to its own decision in **(Misc. Land Case Appeal no 14 of 2016)** (unreported) at page 7 between **ABDI MUSSA VERSUS STEPHANO MBEGA** where it was held that gender of members who sat in the adjudication of the matter must be shown.

Submitting in support of the second ground the learned counsel contended that the evidence on record was in favour of the Appellant. He said that the Appellant adduced evidence to the effect that the suit land belonged to his family and he was given a portion by his late father. It was the learned counsel's submission that the ward tribunal was wrong to decide that the suit land belonged to the Respondent since the village council never allocated any land to HIM. He therefore invited this court to allow his appeal.

In reply, the Respondent had nothing much to say. He simply told this court that he has been living in that land for 18 years and that he has title over the suit land, further that his parent's graves are in the suit land and that he resides there.

In rejoinder, Mr. Nkingwa stated that there is no evidence on record showing there are graves on the suit land.

I beg to start with the issue of appearance of the name of the Secretary in the Coram of the proceedings. Admittedly the names and signature of the Ward tribunal's Secretary, one Ibrahim Juma appears in the Coram and against it is the word "katibu" which is a Kiswahili word for "secretary" of that tribunal. The rest of the names except for the names of the chairman are indicated against each name as members. This clarifies that they constituted members of the tribunal who sat in that particular dispute.

Section 24(2) of the Ward Tribunals Act, gives responsibility to the Secretary of the tribunal to record all evidence adduced and other matters formally transpiring during the proceedings before the tribunal and all other matters in connection with it. In other words secretary is responsible for recording and keeping of records of everything that transpires in the tribunal. He carries out administrative duties of the tribunal. The role of the secretary is so central to the proceedings of the Ward tribunal that it is mandatory that his names and position must be indicated in the

Coram of the proceedings. His presence during the hearing of the matter is a must in order to enable him to take and keep records of what is transpiring and there is no provision in law that bars that. It will be ironical to hamper his/her attendance while he/she is the keeper of records of the tribunal including proceedings of all matters being arbitrated. Section 4(1) and (2) of the Ward Tribunals Act, the secretary of the Ward Tribunal is explicitly distinguished from other members of that tribunal. The law goes as thus:-

***4.—(1) Every Tribunal shall consist of—
(a) not less than four nor more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;***

(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a);

(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.

Thus, Secretary is not a member of tribunal and does not participate in decision making, but he records the decision

made therefore his name must appear in the Coram not as a member but as the secretary. Skipping his names in the proceedings may attract a question as to who recorded the proceedings. As membership to and Secretary of a Ward Tribunal are matters of law each having his/her responsibility in the proceedings, in absence of evidence that the secretary indeed participated in decision making, the appearance of his name on the list cannot be labelled as membership. The Ward Tribunals Act, Cap 206 R.E 2002 empowers the secretary to be a record keeper.

24.—(1) A Tribunal shall cause to be kept and maintained proper records of its proceedings in appropriate form.

(2) The Secretary of a Tribunal shall be responsible for recording all the evidence adduced and other matters formally transpiring during the proceedings before the Tribunal and all other matters in connection with it.

Further, as it could be noted in this case his name appeared and he specified that he was a mere secretary to that meeting. I do not see how this is erroneous in the eyes of law. The averment by the learned counsel that the appearance of the secretary's name in the list by itself suggests a possibility that he participated in decision making, holds no water as in dispensing parties' rights, the court deals with certainties and not possibilities. **In re B (Children) (FC) [2008] UKHL 35, Lord Hoffmann of the House of Lords** stated that

"If a legal rule requires a fact to be proved (a "fact in issue"), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not".

Since there is no evidence that the secretary participated in opining on the matter, the first ground of appeal cannot hold water.

At the hearing counsel for the Appellant mentioned that the Ward tribunal's decision is erroneous as it does not disclose the gender of those who made the decision as required by section 11 of the Land Disputes Courts Act, Cap 216. The section states;

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".

In my view Section 11 of the Land Disputes Courts Act [Cap 216] does not have anything to do with Coram at the sitting of the Ward tribunal for purpose of adjudication. The provision is geared towards the formation of the Ward tribunals. The relevant provision for the Coram during adjudication is Section 4(3) of the Act which provides that:-

"The quorum at a sitting of the Tribunal shall be one half of the total number of members"

The law as quoted above doesn't require gender balance.

Regarding ground two of the appeal, it was submitted that the tribunal erred by upholding the decision of the Ward Tribunal without considering the concrete evidence adduced by the appellant which proves appellant's ownership on the suit land. I wish to point out that it is settled that a second appellate court can only interfere with concurrent findings of facts of the two courts or tribunals below where it is satisfied that the courts or tribunals have misapprehended the evidence in such a manner as to make it clear that its conclusions are based on incorrect premises. In one case of **Ali Abdallah Rajab Vs Saada Abdallah Rajab and others, Civil Appeal No 42 of 1993 (CAT), at Zanzibar (1994) TLR at page 132** The court held that

"The trial court is better placed to assess credibility of witnesses in absence of any indication that it failed to take some material point or circumstances into account."

The appellant avers that in the ward tribunal there was concrete evidence proving his ownership of the land in dispute. I am mindful of section 119 of the Evidence Act, CAP 16 R.E 2002 which stipulates that *"where there is a question of ownership of anything, the burden of proving that the other party is not the owner, lies on the party who asserts this fact,"*

I have gone through the records of the Ward tribunal, the Respondent alleged first that the land belonged to him and to prove his argument he had a document from Kamati ya Huduma za Jamii na Shughuli za Kujitegemea. The Appellant didn't cross-examine the Respondent on this evidence. When he was given an opportunity to cross examine the Respondent the record shows:

"Hakuna hoja yoyote alinyamaza kimya"

The appellant must have accepted allocation letter that is why he did not put any question to the Respondent about the document. The respondent also called a witness with whom they share boundaries and he confirmed that many of them were given pieces of land by Tuliani Village in the year 2001 along with the Respondent.

On his side the appellant brought two witnesses both of whom went against his case;- The first witness MLISHO MOHAMED when cross examined by the Respondent had this to say;-

Swali: Je, kati ya mimi namdai (sic) nina nialiyeanza kulifanyia kazi eneo hilo?

Jibu: Ni mdai Halidi Mohamed

Swali: Kuna Nyumba imejengwa ina zaidi ya miaka 18 unajua ni ya nani?

Jibu: Ninajua ni ya mdai Halidi Mohamed

His second witness IMAMU ISSA MGANGA when inquired by members of what he knew about the dispute he replied "*Sijui Chochote*".

Thus, looking at the evidence on record it does not need any expertise in law or land matters to measure whose evidence was heavier. And as **Sisya J.** stated in the case of **HEMEDI SAID VS MOHAMED MBILU [1986]**, according to law the person whose evidence is heavier than that of the other is the one who must win. The lower tribunals were of the view which view I also subscribe to, that the evidence of the Respondent was heavier than that of the Appellant. So this appeal is found to have no merit. It is accordingly dismissed with costs to the Respondent.


A.R. Mruma,

Judge

Dated at Tanga this 9th Day of March 2020.

