

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

MISCELLANEOUS LAND CASE APPEAL No. 67 OF 2018

*(Arising from the District Land and Housing Tribunal for Karagwe at Kayanga in Land Appeal
No. 39 of 2018 & Original Kaisho Ward Tribunal in Civil Case No. 6 of 2018)*

ALBATI MASHWEKO ----- APPELLANT

Versus

ADVENTINA ALEXSANDER MSHUMBUZI ----- RESPONDENT

JUDGMENT

18/05/2020 & 18/05/2020

Mtulya, J.:

This is an appeal filed by Mr. Albat Mashweko (Appellant) against the decision of the District Land and Housing Tribunal of Karagwe (the District Tribunal) in Land Appeal No. 39 of 2018 delivered on 12th October 2018. The Appellant filed a total of seven (7) grounds of appeal and on 18th May 2020, when the appeal was scheduled for hearing the Appellant invited the legal services of learned counsel Mr. Ibrahim Muswadick to argue the appeal on his behalf, whereas Mrs. Adventina Alexander Mshumbusi (The Respondent) called the legal service of learned counsel Mr. Gerasi Reuben.

During the submission of the appeal Mr. Muswadick consolidated grounds one and two together, three and four together and argued grounds five and seven separately whereas ground number six was abandoned. Mr. Reuben on the other hand protested all grounds of appeal. However, he came up with a wonderful idea with regard to consolidated grounds one and two of the appeal, which in a way, if answered in affirmative, would end the entire appeal.

In the joined grounds one and two, Mr. Muswadick faulted decision of the Ward Tribunal because it had two problems, namely: one, the Kaisho Ward Tribunal (the Ward Tribunal) in Civil Case No. 6 of 2018 was not properly constituted and two, award of the disputed land to the Respondent whereas the District Land and Housing Tribunal quashed the proceedings of the Ward Tribunal.

The texts in the said grounds, in brief, are coached in the following terms:

- 1. That the Ward Tribunal grossly erred in law and facts to mediate a case when it was not properly constituted as coram of the members was contrary to the law; and*
- 2. That the District Tribunal erred in law and facts to grant the suit land to the Respondent illegally.*

In submitting the two arguments, Mr. Muswadick initially contended that the procedure of mediation as is provided in section 14 (1) of the Land Disputes Courts Act [Cap. 216 R. E. 2019] (the Act) require the tribunal, in all matters of mediation, to consist three members and at least one of whom must be a woman. However, in his opinion, the Ward Tribunal constituted five members contrary to the law.

Mr. Muswadick also cited the provision of section 11 of the Act arguing that the Ward Tribunal when making decision must consist of not less than four (4) nor more than eight (8) members and three (3) among the members must be women. To his opinion, the decision of the Ward Tribunal was irregular as it was against the text of the law by consisting of five (5) members.

On the second fault, Mr. Muswadick protested the order of the District Tribunal of granting the disputed land to the Respondent whereas it quashed all proceedings of the Ward Tribunal. To Mr. Muswadick, once the Tribunal quashed the decision of the Ward Tribunal, it lacked mandate to declare the rightful owner of the land. Finally, Mr. Muswadick prayed the Appellant to be declared as a rightful owner of the disputed land.

Replying on the arguments submitted by Mr. Muswadick, Mr. Reuben argued that there is no law cited which states that when proceedings are quashed, the status quo is maintained. However, Mr. Reuben admitted that there are faults in orders of the District Tribunal and mentioned two. First, the Ward Tribunal was improperly constituted and second, it was abuse of court process to grant the Respondent the disputed land from the improperly constituted Ward Tribunal proceedings. To his opinion, the orders may be disregarded. Finally, Mr. Reuben protested Mr. Muswadick's prayer for this court to declare the Appellant as a rightful owner of the disputed land.

According to Mr. Reuben, the reliefs claimed by the Appellant are unfounded because the District Tribunal did not grant disputed land to the Respondent, but gave directives to the parties to go back to the Ward Tribunal. To his opinion, it was wrong for the Appellant to approach this court to prefer an appeal and pray for the declaration of ownership of the disputed land which emanated from improper proceedings.

In a brief rejoinder, Mr. Muswadick maintained his previous position that this appeal must be allowed with costs and the Appellant be declared the rightful owner of the disputed land. With regard to

the appeal, Mr. Muswadick argued that it is a constitution right and his client opted for the same to enforce his land rights.

I have gone through the record of this appeal and submissions made by learned minds. It is clear that the two consolidated grounds alone dispose of this matter, if answered in affirmative. I therefore, do not need to reproduce all submitted grounds of appeal in this judgment. In brief, there are two grievances submitted by learned counsels in this appeal with regard to the two consolidated grounds, *viz.* constitution of the Ward Tribunal and orders of the District Tribunal.

It is fortunate from the submissions of learned counsels, there is no dispute as to the constitution of the Ward Tribunal. A cursory glance of the record shows that on 20th March 2018 the Ward Tribunal was invited to resolve ownership of the disputed land in Civil Case No. 6 of 2018 between the present parties and it consisted of five members namely: Gidion Michael (Chairman), Dalia Flance (member), Aulelia Domitian (member), Jackson Njagi (member) and Helman Christopher (member).

After the proceedings, but before delivery of the decision one member, Dalia Flance did not enter his/her signature in the copy of the

decision. Again, all members who attended the proceedings and delivery of the decision, it is not shown which are male and/or female, contrary to the requirement of the law in section 11 and 14 (1) of the Act.

The second level of Appellant's grievances is the contradictory order of the District Tribunal. The complained order is depicted at page 4 of the decision of the District Tribunal and contained the following words:

So, I proceed to quash the record. The suit land remains to the respondent, one Adventina Alexsander as per section 23 and 35. of Cap. 216 R. E. 2002.

However, at page 3 of the decision, the District Tribunal reasoned that:

The first ground is enough to dispose of the appeal whereby the Ward Tribunal was not well constituted since it was constituted of (five members)... this is contrary to section 14 (1) of Cap. 216 R. E. 2002 and section 4 (4) of the Ward Tribunal Act of 1985... the

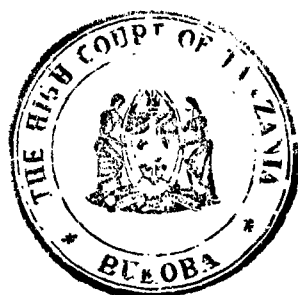
proceeding were not correctly decided according to the law.

The above cited order and its associated reasoning are quietly two different things. It is impossible in law to suppress and vitiate the proceedings of the Ward Tribunal and at the same time declare one of the disputants in the same proceedings a rightful owner of the disputed land. In law, once proceedings are suppressed and quashed, the assumption is that there are no proceedings at all to declare someone a rightful owner of the disputed land. The only available remedy is one of the parties to file a fresh suit in appropriate forum, if he/she so wish according to the law.

As the order of the District Tribunal was uncertain as to whether it quashed or restored the decision of the Ward Tribunal, it was right for the Appellant to prefer an appeal for clarification and part of his constitutional right to land. His appeal must succeed. Having said so, I therefore quash contradictory judgment of the District Tribunal No. 39 of 2018 and its associated orders. On the same trend I quash proceedings and orders and set aside decision of the Ward Tribunal in original Land Case No. 6 of 2018.

This appeal is allowed without costs. Each party to bear his/her costs. The reason is straight forward. The dispute is yet to be determined to its finality to ascertain the rightful owner of the disputed land. Any of the parties, if so wish, may institute fresh suit in appropriate forum to determine the same according to the law.

It is accordingly ordered.

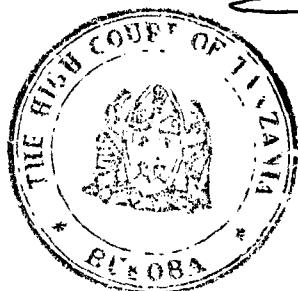



F.H. Mtulya

Judge

18/05/2020

This judgment was delivered in Chambers under the seal of this court in the presence of the Appellant, Mr. Albati Mshweko and in the presence of the Respondent, Mrs. Adventina Alexsander Mshumbuzi and in the presence of their respective learned counsels, Mr. Ibrahim Muswadick and Mr. Gerasi Reuben.




F. H. Mtulya

Judge

18/05/2020