

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TANGA.
AT TANGA.

MISC LAND CASE APPEAL No. 37/2020

(Arising Land Appeal No. 02 of 2019 of the District Land and Housing Tribunal of Tanga at Tanga and Duga Maforoni Ward Tribunal in Land Complaint No. 71/2018).

MWAWENDO HASSANI JUMA APPELANT

VERSUS

CHAIRMAN MAFORONI VILLAGE RESPONDENT

J U D G M E N T

MRUMA, J.

The dispute in these proceedings revolves around piece of land, a football pitch commonly known to both parties, situated at Duga Maforoni Village in Mkinga District. The appellant herein filed a complaint in the Ward Tribunal against the respondent. The Tribunal decided that, the suit land belongs to the Respondent herein, however where there are any revenues accrued from the use of the land, the appellant's family be entitled to 10% share while Maforoni village council gets the rest 90%.

This decision disgruntled the appellant and the appealed to the District Land and Housing Tribunal of Tanga District at Tanga.

On appeal, the decision of the Ward Tribunal was quashed and set aside and it was declared that suit land belongs to the village council.

The Appellant was aggrieved once more and has appealed to this court in the following grounds;

1. That the district land and housing tribunal grossly misdirected itself in law and on facts in failing to find that the application in the Ward Tribunal was not properly there as the appellant did not have locus standi to prosecute the matter there.
2. That the District land and Tribunal grossly misdirected itself in law and on facts in failing to find that as Maforoni Village council was not a party in the matter in Ward Tribunal the grant of Judgment to it was grossly unlawful.
3. That the District land and housing tribunal grossly misdirected itself in law and on facts in failing to find that the ward tribunal was not properly composed in law and that its trial of the matter before it was null and void in law.
4. That there was no evidence to prove that the suit land belonged to the village council and that grant of the said land to the said council had no basis at all.

At the hearing of the appeal, the appellant was duly represented by senior advocate Mramba and the respondent by Mr. Rashid Mohamed, state Attorney and MS Suzana Joseph legal office/District solicitor of Mkinga district council. The matter was conducted by way of oral submissions.

Mr. Mramba for the appellant submitted on the first ground of appeal that it was wrong for the Ward Tribunal to let the appellant, his client to appear as a complainant in the matter while it was clearly known that the original owner of the land is deceased and no administrator of estates was appointed yet.

On the second ground of appeal the appellant submitted that it was wrong for the DLHT to adjudge Maforoni village council as a lawful owner of the dispute land while the respondent was chairman of Maforoni village therefore a human being. Regarding the third ground, it was his submission that section 11 of the Ward Tribunals Act (Cap 206 R.E 2019) prescribes who should compose the Ward Tribunal. The records of the Ward Tribunal do not show how many women sat in the proceedings, in short it was his stance that the Ward Tribunal records were a nullity as the gender of members in not reflected in the proceedings. On the final ground he submitted that there was no evidence that the suit land belonged to the village council. Grant to it had no basis at all. He prayed that the appeal be allowed with costs.

Ms Suzan Joseph started by recapping that in the Ward Tribunal it is this very appellant who instituted the case against the village chairman while knowing he was not a proper party, she conceded that it was wrong to sue a village chairman hence there was nothing wrong with the lower tribunals to declare the village council as the owner of the dispute land.

About composition of the tribunal, Ms Suzan stated that it was composed of six members and even if the gender was not shown, that did not prejudice any party. Moreover section 45 of the land disputes courts Act, Cap 216 R.E 2002 cures such an irregularity. She cited the

case of Yakobo Magoiga Kichere Vs Penina Yusuph, Civil Appeal No. 25 of 2017 CAT at Mwanza unreported). For those reasons she prayed that the appeal be dismissed with costs. While re-joining Mr. Mramba, reiterated that there was no evidence that the Appellant was the intermeddle of the land so as he could sue or be sued. He also stressed that it was wrong for the village council to be declared as a lawful owner while she was not a party. That was all from the parties.

In arriving to the decision of this court, I have considered all the materials placed before me by the parties orally and through the pleadings as well as case laws. Guided by the founs of appeal, I will decided this matter as hereunder.

Ground one of this appeal faults the DLHT for not finding out that the appellant had no locus standi in the Tribunal. This is what is called self-hit this very appellant after realizing that he has interests to protects in the suit land, instituted this matter. Unbelievably, he is now blaming the DLHT for not noting that he had no locus standi in the matter, Frivolous as this seems, sec 11 (2) of the Ward Tribunal Act Cap 206 R.E 2002 allows any person to refer any matter to it it reads;

- (1) proceedings may be instituted by making of complaint to the secretary of a Tribunal, the secretary of an appropriate authority the chairman of a village council or a ten-cell leader.
- (2) Any person who reasonably believes that any person has committed an offence may make

a complaint about the matter to any of the persons specified in subsection (1).

Further, the land Disputes courts Act, Cap 216 R.E 2002 allows any member of the household to appear on behalf of the family

18 – (1) No advocate as such may appear and act for any party in Ward Tribunal.

- (3) subject to the provisions of subsections (1) and (3) of this section, A ward Tribunal may permit any relative or any member of the household of any part to any proceeding, upon request of such party to appear and act for such party.

Without further ado, the first ground therefore fails.

Moving to the second ground where the appellant faults the DLHT for supporting the Ward Tribunal's decision that the land belongs to the village council, I find no reason to interfere with the lower Tribunal's decisions as it is founded in law. In actual fact legally and taking on board the evidence adduced at the ward tribunal, a proper person ought to be responsible was the village council and not a village chairman in his personal capacity. Reminiscing from the complaint tabled before the tribunal, it is clear that the appellant was complaining tabled before the tribunal, it is clear that the appellant was complaining against the village authority and not the village chairman in person I will quote.

"Nimefika mbele ya baraza la kata kumlalamkia ndugu mwenyekiti wa serikali ya kijiji cha maforoni kwamba yeye anatumia eneo lety la familia kinyume

cha utaratibu wetu kwani **kamatai ya mpira wa miguu** ilikuja kuomba eneo kwa baba yetu Hassani Juma naye alitoa....."

Even after the complaint was read out to the respondent, the chairman of Maforoni village, he replied that n behalf of the village council, he was not ready to give away the land yet. According to section 26 (2) of the local Government (District Authorities) Act, 1982 the village council is a body corporate capable of suing and being sued. It follows therefore that a proper party which Mwawendo Hassan Juma ought to have sued in the circumstance was the village authority through the village council which is a legal person. In that case the orders given out by the lower tribunals were appropriate and in line with the law. And in any case, no failure of justice is seen to have been occasioned. Section 45 of the Land Disputed courts Act [Cap 216 r. E 2019] provides;

"No decision or order of Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."

Moving off to ground there, this court has decided n numerous decisions that gender of members of the Ward Tribunal has nothing to do with the sitting of the Ward tribunal while adjudicating matters. Evidence on record shows that six members of the tribunal participate in this matter. The names and signatures can be seen listed on the last

page of the handwritten proceedings. Moreover, throughout the hearing of the matter, members put questions to witnesses evidencing their active participation in the matter.

Mr. Mramba argued that although participation seems vivid but their gender is not stipulated so as to cover the requirement of two among the members being women as per section 11 of the Ward Tribunals Act. Section 11 of the Land Disputes courts Act provides for formation of establishment of Ward Tribunals by Ward Committees. In forming or establishing a Ward Tribunal, a Ward Committees is required to elect not less than four nor more than eight members from amongst the list of names of persons resident in the Ward of whom three shall be women the section provides.

'Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elevated by a Ward committee as provided under section 4 of the Ward Tribunals Act.

The election of members by the Ward Committee which is provided under section 4 (1) of the Ward Tribunals Act, and section 11 of the Land disputes courts Act has nothing to do with the quorum at a sitting of the Tribunal which is provided for under section 4 (3) of the Ward Tribunals Act. The said section provides:

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

Since in this case, six members of the Ward Tribunal participated in the mediation of the matter, the law was duly complied with and so the third ground fails as well.

The last ground is that there was no evidence to prove that the suit land belonged to the village council and that grant of the said land to the said council had no basis at all. This ground will not detain me. The appellant herein is the one asserting that the land does belong to his family, not the respondent i.e the village council. It is a trite principle that he who alleges must prove. The law does not place any burden on the respondent to prove how she/he acquired the land.

As if that is not enough, section 110 (1) of the Evidence Act [Cap 6 R.E 2019] provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. In this matter, the appellant has never proved that the land belongs to his family and not the village council.

There is overwhelming evidence showing that through the years, permission to use the land came from the village authority, properties handling over has been including that land although it is not disputed that the place was granted to the village by Mzee Hassan Juma, it is not established that there was a term or condition that the land will revert back to Mzee Juma's estate upon his demise.

In the circumstances, I am satisfied that this appeal was prepared without any substance. Accordingly, it is dismissed with no orders as to costs.



A. R. Mruma

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Judge

30/11/2021