

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 10 OF 2021

(Arising from High Court Kigoma Misc. Application No. 46 of 2020 Before: A. Matuma, J

And Originating from Consolidated Land Appeal No. 2,3 & 4 of 2019 of the District Land and Housing Tribunal Before: M. Nyaruka – Chairman).

1. DUNIA KAHRUFANI

2. ALBERTO TUNU

3. MAHAMOUD KISWABI

.....**APPELLANTS**

VERSUS

MARWA MAGIGE.....RESPONDENT

JUDGMENT

1st March. & 10th March. 2021

A. MATUMA, J

In the Ward Tribunal of Mungonya, the respondent Marwa Magige sued the 1st Appellant Dunia Kharufani vide Land Case No. 22/2017, 2nd Respondent Alberto Tunu vie Land Case No. 23/2017 and 3rd respondent Mahamoud Kiswabi vide Land Case No. 24/ of 2017.

Each of the three was sued for trespass in land and all lost the suit. They each unsuccessfully appealed to the District Land and Housing Tribunal

on the major complaint that the suit against them was originally decided against the respondent and they asked for the copy of the decision but in vain. To their surprise they were summoned for trial of their respect suits as if the same was still pending.

The second major complaint was that they were not heard to defend themselves.

Having last the 1st appeal, the appellants are now before this Court on 2nd appeal with a total of six (6) grounds of appeal.

I will however not deal with the appeal on merit for obvious reason that the impugned judgments of the trial Ward Tribunal are unclear as to who decided them.

This is because each of the judgment of the Trial Tribunal bears the names of members who made the decision.

But not all of them signed such judgments.

There is no explanation as to why they didn't sign to authenticate such judgments.

I am aware that the trial members are entitled in law to differ in their decision and if that is to happen then under section 4 (4) of the Ward

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Tribunal's Act, Cap. 206 R.E 2002, the decision of the majority shall be deemed to be the decision of the Tribunal.

But by whatever means, the records must be clear whether members differed in their respective opinion as to what should be the decision of the tribunal and reflect the majority decision.

The impugned judgment does not show whether those who didn't sign they did different opinion.

Instead, they reflect that they were among the members who made the decision., if so they ought to have signed such decisions to authenticate them.

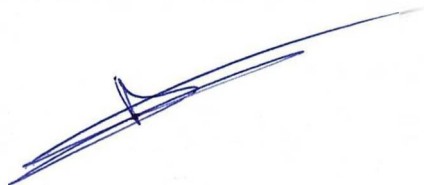
That is not all, each for the appellants has his own original copy of the trial Wards.

Judgement against him.

The respondent has also his copies of the same.

In the Court record, we have also final copies of the impugned judgment.

But for undisclosed reasons, a single and same judgment bears different signatures of the members who decided it.

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For example, in the judgment of Dunia Kharufani in the copy within Court record Prisca Daniel and Juma Buliba did not sign. But in the other copy it was Ramadhani Ally and Said Harufani who did not sign. Prisca Daniel and Juma Buliba are indicated to have signed.

In the case of Mahamoud Kiswabi on one copy it is Prisca Daniel and said Kharufani who did not sign but on the other copy it was the chairman Juma Haruna and Said Kharufani who did not sign. Prisca Daniel signed.

In the case of Alberto Tunu, on one copy the members who did not sign are Dafroza Rukas and Sadi Kharufani but in the other copy Dafroza Rukasi signed and those who did into sign are Prisca Daniel and Saidi Kharufani.

In the circumstances, it is without doubts that the members of the trial tribunal were very much confused on the three cases before them.

It is unaccepted that a single decision can be decided for and at the same time against, by the same decision maker. For not signing the decision, it means such member who did into sign such decision did not make such decision.

To the contrary he who signed, made the decision.



Now in the matter at hand the parties have the same judgments signed for and against by the same members.

With the herein discrepancies the complaints of the appellants that the cases against them were not properly conducted cannot be overruled lightly.

The 1st appellate tribunal ought thus to scrutiny the trial Court's record and satisfy itself as to the correctness of the records thereat.

When I asked the parties to address me on the anomaly, they could not tell. Each wondered on the anomaly as that is a bare/naked fact on the face of record.

Having observed as such, I find that I am necessitated to step into the shoes of the 1st appellate tribunal and exercise my Revisional and Power to remedy the unpleasant features in the trial Court's records by nullifying the decisions thereof which were issued against the appellant.

It has been decided in a number of cases that whenever the appellate Court observes unpleasant features in the trial Court's records, it is entitled not to consider the appeal on merit and instead invoke its revisional powers to remedy the situation.

Among those authorities are;

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- i. Paul Jacob v The Republic, Criminal Appeal No. 2 "B" of 2010 (CAT)*
- ii. Editor, Majira News Paper and 3 others versus Rev. Fr. Riccardo Enrico Riccion and 26 others, Civil Appeal No. 35 of 2013 (CAT).*
- iii. Elikana Bwenda v. Sylivester Kuboko. Civil Appeal No. 7 of 2020 High Court at Kigoma.*

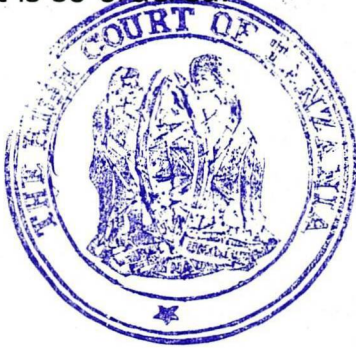
In the circumstances, by invoking my Revisional powers, I hereby nullifying the proceedings and judgments in both lower tribunals i.e. The District Land and Housing Tribunal and the trial Ward Tribunal and the Trial Ward Tribunal. I restore the parties to their original status as if there had not been any suit between them in relation to the land in dispute.

As the pecuniary jurisdiction of Ward Tribunals is limited to Tshs 3,000,000/= and the records at hand does not reflect the value of the dispute land, I will not order a retrial but direct the parties whoever is eager to pursue his rights to commence a fresh suit in a Court of competent jurisdiction be it the Ward Tribunal or the District Land and Housing Tribunal or the High Court provided that the value of the subject matter be it actual or estimated is clearly disclosed.



In the circumstances of this matter no orders as to costs. Whoever aggrieved is at liberty to further appeal to the Court of Appeal of Tanzania subject to the requirements of relevant laws governing appeals thereto.

It is so ordered



A. Matuma,
Judge

10/3/2021

Court: Judgment delivered in chambers this 10th day of March, 2021 in the presence of the appellants in person and in the presence of Mr. Leonard Nzigo legal officer of Advocate Mwangati for the Appellants and in the absence of the Respondent but in the presence of Monica Masanika legal officer of advocate Kabuguzi for the respondent.

Sgd: A. Matuma

Judge

10/3/2021