

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND CASE APPEAL No. 36 OF 2019

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 56 of 2016 & Original from Mushabago Ward Tribunal in Civil Case No. 6 of 2016)

ELIAS TILIPHONE MUSHESHE ----- APPELLANT

Versus

EZEKIAH CRONERY ----- RESPONDENT

JUDGMENT

02/03/2021 & 02/03/2021

Mtulya, J.:

An appeal was registered in this court on 28th November 2018 by Mr. Elias Tiliphone Musheshe (the Appellant) complaining that the judgment of the **District Land and Housing Tribunal for Muleba at Muleba** (the District Tribunal) in **Land Appeal No. 56 of 2016** (the Appeal), erred in law and fact by holding that the Secretary of **Mushabago Ward Tribunal** (the Ward Tribunal) sitting in **Civil Case No. 6 of 2016** (the case) was among the members of the Tribunal who heard and determined the land dispute.

During the hearing of this appeal, the Appellant, who is a lay person, briefly submitted that the Secretary was part in the proceedings and was involved in the determination of the case. However, the

Appellant argued that it was fault of the Ward Tribunal to invite the Secretary in the quorum of the members of the Ward Tribunal. According to the Appellant, the invitation of the Secretary in decision making cannot be said to have been attributed by him and therefore cannot be responsible for wrongs committed by the Ward Tribunal.

This submission was received well by the Respondent's learned counsel Mr. Abel Rugambwa who briefly stated that the Appellant is correct in the sense that the Secretary in the Ward Tribunal sat and determined the case as part and parcel of the Tribunal's constitution. Mr. Abel submitted further that the appointment and functions of the Secretary of the Ward Tribunal are provided in sections 4 (2) & 6(3) of the **Ward Tribunals Act** [Cap. 206 R.E 2002]. With regard to the composition of the Tribunal, Mr. Abel cited the provision in section 11 of the **Land Disputes Court Act** [Cap. 216 R. E. 2019] (the Act) contending that Secretary of the Ward Tribunal is not part of the members of the Ward Tribunal.

To substantiate his submission, Mr. Abel stated that the provision in section 11 of the Act received interpretation of this court in two (2) precedents, namely: **Daniel Chiyunji v. Simon Chiloleti & Another**, Misc. Land Case Appeal No. 60 of 2013; and **Patrice Ama v. Gisman**

Hawu, Misc. Land Appeal No. 18 of 2011. In the precedent of **Patrice Ama v. Gisman Hawu** (supra), this court stated that:

...the decision of the Ward Tribunal was signed by the Secretary and the Chairman of the Tribunal. The Chairman and Secretary do not constitute a quorum of four (4) members as required under section 4 of the Ward Tribunal Act [Cap. 206 R.E. 2002] and section 11 of the Land Disputes Courts Act [Cap. 216 R.E. 2002]. Besides, the Secretary is not a member of the Ward Tribunal and does not constitute a quorum.

This position received a support from this court few years later in the decision of **Daniel Chiyunji v. Simon Chiloleti & Another** (supra), where it was well articulated that:

In the absence of the of the list of members one would not know if the law under section 11 of the Land Disputes Courts Act [Cao. 216 R.E. 2002] has been complied with as far as composition and gender representation of the members is concerned. Further, Secretary of the Ward Tribunal is only writer of the proceeding of the tribunal hence not part of the

*members who hear and decide the case as it happened
in this case.*

Similarly, in the present appeal, record shows that on 4th April 2016, Mr. Akson Fredrick, Secretary of the Mushabago Ward Tribunal sat and participated in the proceedings and was listed as a member both in the initial page and last page of the proceedings. Again, there is another fault. Gender of the members is not shown among the listed members. As there are precedents on the above cited irregularities, this court will not allow the glaring irregularities to remain on record. The directives from our superior court on the subject of irregularities is that: *the superior courts have the additional duty of ensuring proper application of the laws by the courts below* (see: **Diamond Trust Bank Tanzania Bank Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

For the interest of justice and considering cited errors in this Appeal, I concur and uphold the decision of the learned Chairman of the District Tribunal in setting aside proceedings and quashing decision of the Ward Tribunal in the case. However, as in this dispute no one was declared as a rightful owner of the land, I order fresh and proper trial in the Ward Tribunal. I shall not order costs in this Appeal. Each party shall

bear its own costs. The reason is straight forward. The irregularities were not caused by the parties. It was caused by the Ward Tribunal in Mushabago area.

It is so ordered.



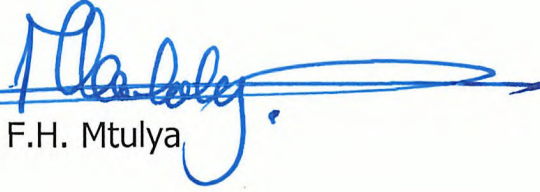

F.H. Mtulya

Judge

02.03.2021

This judgment was delivered in chambers under the seal of this court in presence of the Appellant, Mr. Elias Tiliphone Musheshe and his learned counsel Mr. Abel Rugambwa and in presence of the Respondent, Mr. Ezekiah Cronery.




F.H. Mtulya

Judge

02.03.2021