

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA  
AT ARUSHA**

**MISCELLANEOUS LAND APPEAL NO. 07 OF 2016**

(Arising from the District Land and Housing Tribunal of Arusha in Appeal  
No. 30 of 2014, Originating from the Ward Tribunal of Mateves in  
Application No. 04/2013)

**LONGISHU MEMURUTI ..... APPELLANT**

**VERSUS**

**WILLIAM MEMURUTI ..... RESPONDENT**

**JUDGMENT**

11/12/2020 & 26/2/2021

**ROBERT, J:**

The Respondent, William Memuruti, filed a suit against the Appellant, Longishu Memuruti in the Ward Tribunal of Mateves in Application No. 4 of 2013 claiming ownership of 18 acres of landed property located at Olasit Ward in Arusha region. The trial tribunal decided in favour of the Respondent herein. Aggrieved, the Appellant filed an appeal at the District Land and Housing Tribunal of Arusha. Still aggrieved, he preferred an appeal to this court armed with five grounds of appeal which reads as follows:

- (1) *That the Appellate Tribunal erred in law and in fact in not faulting the decision of the Trial Ward Tribunal for being improperly constituted when it handed down its decision.*
- (2) *That the Appellate Tribunal erred in law and fact in upholding the decision of the Trial Ward Tribunal which was not in harmony with the evidence on record.*
- (3) *That the Appellate Tribunal erred in law and fact when it upheld the judgment of the Trial Ward Tribunal which was bad in law for want of jurisdiction.*
- (4) *That the Appellate Tribunal erred in law and fact in not nullifying the decision of the Trial Ward Tribunal which was a nullity ab initio for the same having been signed by the secretary of the Trial Tribunal who in law is not a member of the Ward Tribunal.*
- (5) *That the Appellate Tribunal erred in law and fact in upheld (sic) and not nullifying the judgment of the Trial Ward Tribunal which was obtained when the Appellant herein was denied his right to be heard at all.*

Parties in this suit were represented by Ms. Winnie Evarist, Learned Counsel assisted by Omar Burhan and Salehe Baraka Salehe, learned counsel

for the Appellant whereas the Respondent was under the services of Dr. Mchami, learned counsel.

Submitting in support of the appeal, Mr. Omar Burhan abandoned ground no. 5 and argued the remaining four grounds consecutively.

Submitting on the first ground, he argued that section 11 of Act No. 2 of 2002 which establishes composition of the Ward Tribunal requires three of the members to be women. He faulted the Ward Tribunal for not indicating the gender of the members who formed the composition of the Ward Tribunal in this matter. However, he argued that, based on the names of the members, it appears that only two of them were women. Based on that, he faulted the composition of the Ward Tribunal in this matter for not being properly constituted.

He referred the court to the High Court decision in the case of **Kassim Ngoroka vs Benard Masembula, Misc. Land App. No. 3 of 2006 (unreported)** at page 3 in support of his argument.

On the second ground, he faulted the District Land and Housing Tribunal for upholding the decision of the trial Tribunal which, he maintained that, does not conform with the evidence on record on two aspects. On the first

aspect, he submitted that the Respondent herein indicated at the trial Tribunal that the suit land belonged to his late father and further that, it was divided after his father's death by one Mzee Mshiri. He maintained that, it was not stated if there was a person appointed as the administrator of estate and therefore the administration of estate was not done according to law and it should be declared unlawful. On the second aspect, he argued that, the Respondent's claim for 18 acres of land was made on the basis that his father was given the said land by the military as compensation for his land in Oldonyo Sambu which was taken by the military. He submitted that, there was no evidence to establish that the Respondent's father was compensated by the military.

He argued further that, section 110 of the Evidence Act, provides that any person who wants the court to decide on his favour must prove. The Respondents' failure to establish his claim is fatal. If the lower court judgment is left to stand it will cause embarrassment during execution.

The third ground of appeal is all about the jurisdiction of the ward tribunal. The Learned counsel submitted that, the Respondent's claim was for 18 acres of land located at Olasit Ward in the city of Arusha which reasonably has a higher value than the pecuniary jurisdiction of the Ward

Tribunal provided for under section 15 of the Land Disputes Act, Act No. 2 of 2002.

On territorial jurisdiction, He argued that section 10(1) of the Land Disputes Courts Act, Cap. 216 gives jurisdiction to the ward tribunal in relation to the area of District Council in which it is established. He argued that the Mateves Ward Tribunal which decided on the matter is in Arusha District Council while Olasit Ward is in Arusha City Council and therefore it had no territorial jurisdiction on the matter.

On the fourth ground, he submitted that the judgment of the trial Ward Tribunal at page No.2 indicates the list of members of the Ward Tribunal. The second person in the list is Richard Maijo who is titled as secretary. He maintained that, the law is clear that the secretary of the Ward Tribunal is not a member of the Tribunal. However, in this matter the secretary of the Ward Tribunal formed part of the Coram and was listed as a member. He argued that the secretary as an employee of the District Council who is not a member of the Ward Tribunal was involved in the decision unlawfully.

He referred the court to the case of **Kassim Ngoroka (cited above)** at page no. 3 where it was held that the secretary to the Tribunal is not among members of the Ward Tribunal.

Responding on the first ground, Dr. Mchami submitted that section 11 of the Land Disputes Courts Act provides for the composition of the Ward Tribunal. He maintained that the law does not provide that every time the Ward Tribunal seats it has to have three members who are women. He argued further that, the decision of Kassim Ngoroka referred to by the Appellant went outside the requirement of section 11. The provision does not require/demand the things mentioned by the Hon Judge in his decision.

On the second, third and fourth grounds, he submitted that these grounds of appeal were part of the grounds of appeal filed in the District Land and Housing Tribunal. He maintained that, since these grounds were not argued it means they were abandoned hence the chairman did not give any decision on the said grounds.

He made reference to the case of **Joseph Jombo @ Mahena vs Republic, Cr. App. No. 448/2016** at page 18 where he argued that the court made

a decision to the effect that the grounds of appeal which were not argued and decided in the lower court are devoid of merit in the subsequent appeal.

He argued further in the second ground of appeal, the Respondent filed the case as Administrator of Estate but the secretary of Ward Tribunal did not indicate that in the filed case. He stated that, because this was not done it is proper to return the matter back to the Ward Tribunal to rectify the records. To rectify this problem would require this court to nullify all proceedings of the lower court. He stated that, if that is done it should not ~~be at the cost of the Respondent because he did not cause that problem.~~

On the second aspect, he suggested that the proceedings be nullified and the matter be argued de novo based on the grounds stated above. He stated that in view of the concession made, he saw no reason to argue the remaining grounds because everything was a nullity based on the fact that the proceedings do not indicate that the Respondent sued in his capacity as administrator of estate.

In rejoinder Mr. Salehe Baraka Salehe maintained that it is a requirement for the gender, names, signatures of the members of the Ward Tribunal to

be indicated as it helps to determine if the members who started the proceedings are the ones who went through with it.

On the fact that, the grounds raised at the District Land and Housing Tribunal are the same with the ones filed in this appeal, he maintained that they are not the same. He argued that, records do not indicate that the grounds which were not argued were abandoned.

On the issue of irregularity and jurisdiction he argued that, the issue of jurisdiction can be raised at any stage. Since the Ward Tribunal had no pecuniary jurisdiction and the Respondent had no locus to sue, these are valid points and this appeal need to be allowed with cost.

Having heard submissions from the parties and reviewed records in this matter, I will now make a determination on whether this appeal has merit. I propose to start deliberations on the second ground of appeal.

The second ground of appeal faulted the appellate tribunal for upholding the decision of the trial Ward Tribunal which was not in harmony with the evidence on record. The ground was argued in two prongs. I will deliberate on the first prong where the Appellant argued that, since the suit land belonged to the Respondent's father who is deceased, the Respondent did



not have locus to file an action against the Appellant at the Ward Tribunal of Mateves in Application No. 4 of 2013 claiming his father's land in his personal capacity without being appointed as administrator of estate.

It is not disputed that the suit land formed part of the estate of both parties' parent. However, records indicate that the Respondent sued in his personal capacity, not as administrator of estate, on a claim of landed property belonging to the estate of their late father.

Although the learned counsel for the Respondent submitted that the Respondent sued in his capacity as the administrator of estate, it is evident from the records that that is not reflected in the title of the case. Counsel for the Respondent maintained that the Respondent filed this case as Administrator of Estate but the secretary of the Ward Tribunal did not reflect that in the title of the case. I have perused the proceedings of Mateves Ward Tribunal and noted that on 27/2/2014 members of the Ward Tribunal were shown letters of administration appointing the Respondent William Memuruti as administrator of estate of the late Memuruti Sanavari, their father. However, records do not indicate if the said letters of administration were received and admitted as evidence, and the Respondent who brought an action in that Tribunal appears in the title of the case in his personal capacity.

I therefore find and hold that William Memuruti had no locus standi to sue over the suit property in his personal capacity claiming the property belonging in the estate of his late father. That said, I quash the proceedings of both the trial Ward Tribunal and that of the District Land and Housing Tribunal and set aside the Judgments and orders thereof. As both parties claim that the suit land belong to their late father and the Respondent sought to file this suit as the Administrator of Estate, I remit the case back to the trial court and direct the trial court to reflect that in the title of the case. I order that the matter should be heard and determined expeditiously taking into account that it is a long pending matter. In view of this, I find no pressing need to deal with the remaining grounds.

In the event, this appeal has merit and I allow it. Considering the circumstances of this case I give no order as to cost.

It is so ordered.

