

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**AT MBEYA**

**MISC. LAND APPEAL NO. 30 OF 2019.**

***(Arising from the District Land and Housing Tribunal for Mbeya, at Mbeya, in Land Appeal No. 159 of 2018, Originating in Mpande Ward Tribunal, in Land case No. 51 of 2018).***

**GABRIEL MBUNA.....APPELLANT**  
**VERSUS**

**NEEMA YOMBO.....RESPONDENT**

**JUDGMENT**

**25/02 & 25/05/ 2021.**

**UTAMWA, J:**

The appellant in this appeal is one GABRIEL MBUNA. He appeals against the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the DLHT) in Land Appeal No. 159 of 2018. The matter originated in Lugelele Ward Tribunal (the trial Tribunal).

The brief background of this matter according to the record goes thus: the respondent, NEEMA YOMBO initiated proceedings before the trial Tribunal against the appellant for a piece of land (the disputed land). The case was registered as Land Case No. 51 of 2018. The trial Tribunal decided it in favour of the respondent. Aggrieved by that decision, the

appellant appealed to the DLHT. The DLHT dismissed the appeal with costs through a judgement dated 07/05/2019 (hereinafter called the impugned judgment). The appellant was not contented by that dismissal of the appeal. He is now appealing against the impugned judgment.

The petition of appeal is based on the following four grounds of appeal which I reproduce verbatim for a readymade reference:

"PETITION OF APPEAL

...

1. That, the District Land and Housing Tribunal erred in law and facts to uphold the decision of the Ward Tribunal as the respondent had no locus stand to sue the appellant.
2. That, the lower Tribunals erred in law and fact to grant to the respondent the disputed land which the appellant legally owned and used the land since 1983 undisturbed by the respondent's parents.
3. That, the lower Tribunals erred in law and fact as the proceedings in Ward Tribunal contravenes with the laws for failure to show the members of the tribunal who sat and heard the matter in each sitting.
4. That, the trial tribunals erred in law and facts as failed to properly evaluate the evidence of the appellant."

Owing to the above grounds of appeal, the appellant urged this court to allow the appeal with costs. The respondent resisted the appeal at hand.

When the appeal was called upon for hearing, the appellant was represented by Mr. Isack Chingilile, learned counsel. The respondent appeared in person without any legal representation. The appeal was argued by way of written submissions following the agreement by the parties and the directive of this court.

In deciding this appeal, I will firstly consider the arguments of the parties on the third ground of appeal and determine it for purposes of convenience. Besides, this ground of appeal touches the jurisdiction of the trial tribunal. It is also the law that, an issue of jurisdiction is fundamental and must be determined before a court tests any other issue. again, the third ground of appeal is forceful enough to dispose of the entire appeal if it will be upheld, even without considering the rest of the grounds of appeal.

In supporting the third ground of appeal, the learned counsel for the appellant submitted that, the proceedings of the trial tribunal contravened the law for failure to show the Coram in each of its sittings. He contended that, the record of the trial tribunal indicated that, the case was heard on three different dates, i.e on 4/10/2018 when the evidence of the respondent and appellant was recorded, on 8/10/2018 when the evidences of both parties' witnesses were recorded and on 11/10/2018 when the case was adjourned.

The appellant's counsel further contended that, the record is silent on the members who sat and heard the case on 8/10/2018. The counsel for the appellant argued that, the omission was a serious irregularity which vitiated the proceedings and the decision thereof. He also argued that, the irregularity cannot be cured by the principle of overriding objective. He thus, urged this court to nullify the proceedings and quash the decision of both lower tribunals.

On her party, the respondent argued that, the third ground of appeal lacks merits. This followed the fact that, the Coram of the trial tribunal on the respective dates, was indicated at the end of the proceedings on each hearing date. She thus, prayed for this court to dismiss the appeal with cost.

The issue regarding this third ground of appeal is *whether or not the DLHT erred in not finding that the trial tribunal (ward tribunal) was not duly composed in terms of its coram*. The answer to the posed issue can be found in the record of the trial tribunal. Before I consider the contents of the record, I will demonstrate the requirement of the law on the composition of a ward tribunal. The relevant provisions of law are sections 11 and 14 (1) of the Land Disputes Courts Act, Cap. 216 R.E 2019 (the LADCA). Section 11 of the LADCA provides that, each ward tribunal shall consist of not less than four nor more than eight members of whom three shall be women. As to section 14 (1) of the same legislation, it caters for a specific Coram of members per sitting. It guides that, a tribunal shall, in all matters consist of three members at least one of whom shall be a woman. This means that, it is not a legal requirement for all the members of a ward tribunal to sit for a single case.

In the case at hand, the record of the trial tribunal tells loudly that, the matter before it was heard for the first time when both parties' evidence was record. The matter was adjourned for the second sitting to 8/10/2018. In that second sitting witnesses for both sides were heard. The matter was again adjourned to 11/10/2018 for the third sitting. The record however, is silent on the Coram when the tribunal sat for the second time.

Indeed, as contended by the respondent, the Coram in the trial tribunal was indicated at the end of the proceedings, but the same was done only in the first sitting (i.e 4/10/2018), the third sitting (i.e 11/10/2018) and the fourth sitting when the trial tribunal made its decision (i.e 22/10/2018). This means that, the record does not show which members had sat in the second session.

In my view therefore, it cannot be said that the tribunal was duly composed as per the mandatory provisions of section 14 (1) of LADCA.

The effect of the omission committed by the trial tribunal was fatal and goes to its jurisdiction. This is because, it is not certain if the members who sat in deciding the matter at the fourth session were the same who had heard the parties' witnesses in the second meeting. It is also not clear if their decision also considered the evidence adduced by the parties' witnesses at the second sitting. There was thus, no transparency in deciding the matter before the trial tribunal. In law, transparency and justice are inseparable; see the prudence of this court (Moshi, J. as he then was) in **Gilbert Nzunda v. Watson Salale, (PC) Civil Appeal No. 29 of 1997, at Mbeya** (unreported).

Indeed, I am aware of the provisions of section 45 of the LADCA. They require this court to consider only substantial justice and ignore procedural technicalities in deciding appeals of this nature. The provisions of law were underscored by the Court of Appeal of Tanzania (CAT) in the case of **Yakobo Magoiga Kichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza** (unreported). In that precedent, the

CAT underlined the principle of “overriding objective.” This was underlined in our laws through the Written Laws (Miscellaneous Amendments Act) (No. 3) Act, No. 8 of 2018. It essentially requires courts to deal with cases justly, speedily and to have regard to substantive justice.

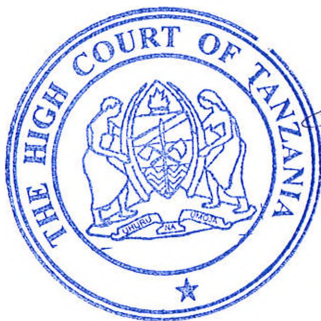
Nonetheless, the principle of overriding objective was not meant to absolve each and every blunder. Had it been so, all the rules of procedure would be rendered nugatory. The principle does not thus, create a shelter for each and every breach of the law on procedure, including violations against the rules related to the jurisdiction of the court/tribunal which are relevant to the matter at hand. This is the envisaging that was underlined by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the principle of overriding objective amid a breach of an important rule of procedure.

In the matter at hand, the DLHT held that, the trial tribunal had been properly constituted. However, since I have held otherwise, for the reasons shown above, I hereby fault the DLHT. I therefore, answer the issue affirmatively that, *the DLHT erred in not finding that the trial tribunal (ward tribunal) was not duly composed in terms of its coram*. I consequently, uphold the third ground of appeal.

Owing to the reasons shown above, the entire proceedings of the trial tribunal are liable to be declared a nullity and to be quashed. Its decision is also liable to be set aside. The same applies to the proceedings

and the impugned judgment of the DLHT for basing of the nullity proceedings and verdict of the trial tribunal.

The findings I have just made above regarding the third ground of appeal are capable of disposing of the entire appeal at hand without considering the rest of the grounds of appeal. I therefore, make the following orders: the proceedings of both the trial tribunal and the DLHT are hereby declared a nullity and quashed. Their respective verdicts are also set aside. Each party shall bear his own costs since none of them bears the blameworthiness for the abnormalities committed by the trial tribunal. If parties still wish, the matter may be tried *denovo* by different set of members. It is so ordered.



J.H.K. Utamwa  
JUDGE  
25/05/2021.

25/05/2021.

CORAM; JHK. Utamwa, J.

Appellant: present in person.

Respondent: present in person.

BC; Ms. Patrick Nundwe, RMA.

Court: judgment delivered in the presence of both the appellant and the respondent in court, this 25<sup>th</sup> May, 2021.

JHK. UTAMWA.  
JUDGE.  
25/05/2021.