

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT COURT OF MUSOMA)
AT MUSOMA**

MISC. LAND APPEAL NO. 17 OF 2021

(From the Decision of the District Land and Housing Tribunal of Musoma
in Land Appeal No. 137 of 2020)

BLANGETI MJUMA APPELLANT

VERSUS

MAKANYA MGABO..... RESPONDENT

JUDGMENT

20/7/2021 & 28/7/2021

MKASIMONGWA, J

In the Ward Tribunal of Kiriba Ward one Makanya Mgabo sued Blangeti Mjuma for "Uvamizi wa Ardhi". The later lost the case. In concluding the matter the Ward Tribunal was recorded stating as follows:

"Tumejiridhasha na Ushahidi wa pande zote vielelezo vilivyomo shambani na Ushahidi wa mazingira haki katika shauri hili kumpa malalamikaji Makanya s/o Mgabo kwamba shamba hili ni mali halali".

Blangeti Mjuma was dissatisfied by that decision. He therefore appealed to the District Land and Housing Tribunal for Mara at Musoma. In the Appeal, Blangeti Mjuma faulted the decision of the Ward Tribunal on the following grounds:

1. That in the Ward Tribunal no formal written complaint was lodged
2. That the Ward Tribunal was not properly constituted
3. That the Ward Tribunal members' opinions were not shown.
4. That the Ward Tribunal did not record and analyze the evidence adduced before it
5. That the judgment did not fulfil the legal requirements.

In determining the appeal the District Land and Housing Tribunal Chairman was of the view hence held that the Ward Tribunal was properly constituted and that in the matter there was a formal complaint namely; "UVAMIZI WA ARDHI". The Chairman further, held that there was ample evidence which justified the judgment of the Ward Tribunal in that the Respondent, Makanya Mgabo, had been in peaceful occupation of the suit land as far back from 1945 up to 2009.

Blangeti Mjuma (Appellant) was again, aggrieved by the decision of the District Land and Housing Tribunal in the appeal. He consequently preferred this appeal challenging it. The Appeal is founded on five grounds as follows:

- 1. That, since the parties made it clear that the land that was in claim was family land, the Appellate Tribunal erred on point of*

law when it failed to find that both parties or either of them had no locus standi.

- 2. That the Appellate Tribunal misdirected itself on point of facts when it misapplied the evidence of the parties in matter on appeal.*
- 3. That since the matter before the 1st Appellate Court was in a form of a hearing and that the Appellate Tribunal ought to have re-assessed and re-evaluated evidence to come to own conclusion, failure to do so amounted to an abrogation of powers that led to a failure and miscarriage of justice.*
- 4. That the evidence at the locus in quo, which was NO subjected to cross examination nor came from the witnesses who appeared before the Ward Tribunal, influenced the outcome of the matter to the extent of marring the proceedings.*
- 5. That the attendance and Coram of the members of the Tribunal was so irregular to lead to a just decision.*

When the Appeal came for hearing, Mr. Baraka Makowe (Advocate) appeared before the Court representing the Appellant whereas the Respondent appeared in person. Upon being invited to argue the Appeal, Mr. Makowe in the first place informed the Court that he is abandoning the second ground of appeal and it was accordingly so marked by the Court. The learned advocate then argued the First, Third and Fourth grounds of appeal together and the Fifth ground separately. In arguing the

first three grounds of appeal, Mr. Makowe submitted that He added that, in the appeal lodged before the District Land and Housing Tribunal the Appellant complained that the Ward Tribunal did not analyze the evidence adduced before it in which case the District Land and Housing Tribunal was entitled to analyze it. The issue before this Court is therefore whether or not the evidence was properly analyzed. The learned counsel stated that, in evidence adduced before the Ward Tribunal the parties claimed that the suit land belongs to their respective families. It was not clear therefore as to who ought to sue and be sued for the suit land in which case, the Tribunals below could not declare it as the property of either of them the parties had no *locus standi* in the matter. As the parties had no necessary *locus standi* Mr. Makowe suggested the Court that it issues an order revising the decision of the District Land and Housing Tribunal and other necessary orders as to how the matter should be rightly dealt with.

Mr. Makowe contended further that, in the case when the Ward Tribunal Members visited he *locus in quo*, various people were invited as witnesses and gave their testimonies. The record is silent if the parties were accorded with an opportunity of cross examining those witnesses. As such the trial was not fair and since the evidence given by the witnesses

when the Tribunal Members during *locus in quo* was heavily relied upon by the Tribunal in determining the suit, injustice was occasioned to the parties. In that position of the matter, Mr. Makowe submitted that all proceedings before the Ward Tribunal and the decision handed by it in the case were a nullity hence deserved for an order nullifying both of them.

Regarding to the fifth ground of appeal it was Mr. Makowe's contention that going by the proceedings of the case before the Ward Tribunal it is not known as to who were the Members of the Ward Tribunal duly selected to deal with the case as it ought to be in terms of Section 14 of the Land Disputes Courts Act [Cap 216 R.E 2019]. He said, when the Members of the Ward Tribunal visited the land in dispute it is on record that MUGINI MAGOTI was among of them. The later, but was not involved in the hearing of the matter. He could not, therefore successfully participate in determination of the case. Mr. Makowe submitted that since the Coram in the matter was not systematic the proceedings before the Ward Tribunal are a nullity and they should therefore be nullified. As the District Land and Housing Tribunal did not nullify the proceedings, Mr. Makowe requested this Court to order for nullification of the proceedings.

On the other hand, the Respondent adopted, to be part of his submission, all the contents of the Reply to the Petition of Appeal he had filed in the matter. He added that MUGINI MAGOTI is the Appellant's own young father. It was resolved by the Tribunal that he should not participate in the matter as a Member of Tribunal. That is why he was not heard giving opinion in the matter as those Members who duly heard the case did. The respondent prayed the Court that it dismisses the Appeal with costs.

In a brief rejoinder, Mr. Makowe reiterated that going by the record, MUGINI MAGOTI was among the Members of the Ward Tribunal who visited the land in dispute. He did not surface elsewhere within the proceedings. The learned counsel insisted of his prayer to have the appeal been allowed.

I have attentively considered the submissions by the parties. I have also in the same manner read the records brought before me in respect of this matter. Going by the submissions and the grounds on which this appeal is founded, I find it that determination of the appeal depends on the answers to the following issues: -

1. Whether the parties had *locus standi* in the matter.

2. Whether the evidence adduced before the Ward Tribunal was well analyzed.
3. Whether the Ward Tribunal was properly constituted.

I prefer to start to consider the third issue above. Going by the record, it is evident that Makanya Mgabo (Respondent) complained in the Ward Tribunal of Kiriba Ward over land trespass against Blangeti Mjuma (Appellant). It is on record that by the time the suit was instituted in the Ward Tribunal, the Tribunal had a total of six Members (including the chairman). Among the members, four members (including the Chairman) were assigned to hear and determine the suit. Those were Jonathan K. Ngomero (Chairman), Mrs. Martina Majula, Matundule Maregesi and Mrs. Debora Jumanne. In his submission Mr. Makowe, referred the Court to Section 14 of the Land Disputes Courts Act [Cap 216 R.E 2019] regarding to composition of the Ward Tribunal. Subsections (1) and (2) of the section read as follows:

"14 (1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.

(2) The chairman to the Tribunal shall select all

three members including a convener who shall preside at the meeting of the Tribunal”.

Here the law provides for the quorum of the Ward Tribunal in all matters of mediation. Where the matter before the Ward Tribunal is for adjudication Section 4 (3) of the Ward Tribunals Act [Cap 206 R.E 2019] provides for the quorum. There the law states that:

"4 (3) The quorum at a sitting of Tribunal shall be one half of the total number of members”.

As pointed out earlier that the Ward Tribunal had six members in total. In that premise where four members presided over the matter at hand, I find, as the District Land and Housing Tribunal did, the Ward Tribunal was properly constituted.

In his submission Mr. Makowe also, contended that on the date the Ward Tribunal Members visited the land in dispute Mugini Magoti was in attendance as a Member of the Tribunal. This is true. Mr. Makowe was silent in that he did not tell the Court what was the role of Mugini Magoti there at the land. As he said, the record shows that, that was the first and last time the Member appeared in the record. Evidently Mugini Magoti did not give opinion in the matter. In my view a mere presence of the member of the Ward Tribunal when the Tribunal visits a suit land does not prejudice

any party in the matter. With such an approach of the matter the Court finds the answer to the third issue to be in the affirmative that the Ward Tribunal was properly constituted.

As to the *locus standi* of the parties; it is my observation that the issue was not first taken into the Ward Tribunal by the parties as their pleas. It surfaced during the time parties were testifying that the land in dispute belongs to their respective families. I have considered such statements, and I am not convinced that the parties were denying their personal interest in the disputed land. They came up with the statements just to show the historical back ground as to how ownership of the land in issue evolved into them. Take it for example where the Respondent complained that the Appellant had personally trespassed into the land; would it be proper for him to sue the latter's family against such a trespass only because the trespasser came up with the defence that the land in issue is the family's property? I think the answer is no. In such a situation, the Appellant could not even in a sweeping manner be heard stating and believed that the land is that of his family. He must adduce evidence to show that the claimant (Respondent) does not own the land and he

(Appellant) has the right to it. In the premise, the parties could not be held to have no *locus standi* in the matter.

As to whether or not the evidence adduced before the Ward Tribunal was analyzed; I find it is surprising where the Appellant alleges that the Ward Tribunal did not analyze the evidence adduced before it. This, the Ward Tribunal did as it is clearly shown on page four (4) of its judgment. In its decision the District Land and Housing Tribunal held that the Ward Tribunal had properly analyzed the evidence adduced before it. It also, based on the evidence, held that the Appellant was not entitled to the land for the Respondent had been in peaceful occupation of the suit land since 1945 to 2009. This holding, on a legal issue, again was never challenged by the Appellant in this Appeal.

All in all I find the District Land and Housing Tribunal was justified when it dismissed the Appeal before it. This Appeal has no merit and it is hereby dismissed with costs.

DATED at MUSOMA this 28th of July, 2021.




E. J. Mkasimongwa
JUDGE
28/7/2021