

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

LAND APPEAL NO.8 OF 2020

(Arising from the District Land and Housing Tribunal for Mtwara at Mtwara in Land Appeal No.29 of 2020 which originated from Land Case No.31 of 2019 from Namalenga Ward Tribunal)

LIDYA RAISI NGOCHERO.....APPELLANT

VERSUS

SELEMANI MOHAMED MKANGANYO.....RESPONDENT

JUDGMENT

3 June & 20 July, 2021.

DYANSOBERA, J.:

This is an appeal against the judgment and decree of the District Land and Housing Tribunal for Mtwara at Mtwara on Land Appeal No.29 of 2020 which declared the respondent the lawful owner of the suit farm as a bonafide purchaser for value of the said suit farm.

A brief background for purposes of this appeal is axiomatic. The appellant Lidya Rahisi Ngochero sued the respondent one Selemani Mohamed Mkanganyo at Namalenga Ward Tribunal in Land Case No. 31 of 2019. The Ward Tribunal declared her to be the lawful owner of the cashewnut suit farm. Aggrieved, the respondent successfully appealed to the District Land and Housing Tribunal vide Land Appeal No. 29 of 2019. In allowing the appeal, the District Land and Housing Tribunal, in its judgment delivered on the 7th day of August, 2020, set aside the decision of Namelenga Ward Tribunal which had declared the appellant, the administratrix of the late Elisha Ngochero the lawful owner of the

suit farm. It declared the respondent the lawful owner as a bonafide purchaser for value of the suit farm.

The appellant thought that the decision of the District Land and Housing Tribunal robbed her of justice, hence this appeal. In the amended petition of appeal filed by Mr. Florence Mwanawima, learned Counsel for the appellant on 9th March, 2021, two grounds have been raised, to wit:-

1. The appellate Tribunal erred in law in failure to hold that the Ward Tribunal had no jurisdiction to entertain the matter.
2. The appellate Tribunal erred in law in failure to hold that there was no proper record of day to day activities of the Ward Tribunal.

When this matter came for hearing on 2.6.2021 the appellant and respondent were represented. While the appellant enjoyed the legal services of Mr. Florence Mwanawima, learned advocate, Ms Felister S. Awasi, learned Counsel appeared for the respondent.

Mr. Mwanawima submitted on the first ground on jurisdiction of the Ward Tribunal. He argued that the issue of jurisdiction can be raised at any time, even at an appeal stage and that the trial Tribunal having no jurisdiction, the proceedings and decisions were null and void. To buttress his argument, learned Counsel for the appellant referred this court to the decision of the Court of Appeal in the case of **Tanzania - China Friendship Textile Co. Ltd. v. Our Lady of the Usambara Sisters** [2006] TLR at page 70 and section 15 of the Land Dispute Courts Act [Cap. 216 R.E.2019] stressing that the powers of the Ward Tribunal are limited to land whose value does not exceed Tshs. 3, 000,000/= . He contended that the Ward Tribunal was duty bound to

satisfy itself by valuation or value approximation of the suit land to ensure that it had jurisdiction and that this procedure had to be reflected on the record. This, the Ward Tribunal failed, learned Counsel emphasised.

With respect to the second ground of appeal, Mr. Mwanawima submitted that s.24 (1) of the Ward Tribunals Act [CAP. 206 R.E. 2002] put a mandatory requirement to put records so as to know the quorum and the gender representation. It was his further submission that the composition of the Ward Tribunal is found under section 4 of the Ward Tribunals Act and section 11 of the Land Dispute Courts Act. According to him, at the Ward Tribunals, members should be not less than 4 and not more than eight and the female members, an aspect which was emphasised by this court in various decisions such as **Osmundi Ngongi v. Florian Ndumba**, Land Case Appeal No.31 of 2014 HCT at Songea at p.5 and **Elizabeth Kapanga v. Holela Rashid**, Misc. Land Appeal No.6 of 2016 HC (T) at Songea, unreported at p.12.

Counsel for the respondent informed this court that nowhere in the Namalenga Ward Tribunal's proceedings is shown that the members were involved. Likewise that the proceedings are silent on when the hearing commenced and ended up. This, counsel argued, implies that the gender issue was not considered and the members of the Tribunal were the ones who heard the case and this contravened the legal requirements.

He thus urged the court to allow the appeal with costs and quash and set aside the judgments and proceedings of the lower Tribunals.

In rebuttal, Ms Felister Awasi, counsel for the respondent maintained that the Ward Tribunal had jurisdiction to hear the matter before it. She contended that the advocate has not given the estimates or value of the suit farm. According to her, the land had two and half acres and was bought at Tshs. 1000, 000/= and that when the respondent was making an announcement of the sale, the purchase price was at Tshs. 2.5m/- but after negotiation, the farm was purchased at 1m/- only. To bolster her argument, Ms Awasi relied on the case of **Tahona Raphael Shempemba v. Mabula Misunguni**, Misc. Land Appeal No.86 of 2017(unreported) at page 5. In her further argument, Counsel for the respondent said that the appellant instituted the suit before Namlenga Ward Tribunal whereby, the suit farm was within the jurisdiction of the Ward Tribunal in which case, the appellant has no basis of complaining at his stage.

Furthermore, Ms Awasi stressed that trial Tribunal heard the matter and was satisfied that it was clothed with jurisdiction and, therefore, the decision before the Ward Tribunal was properly arrived at.

Submitting against the second ground of appeal, Ms Awasi argued that the appellant's complaint has no basis as the copy of the proceeding she had was clear on the quorum. She further insisted that the Ward Tribunal's proceedings complied with the law but her counterpart learned brother was not telling the truth on this ground.

Counsel for the respondent concluded her submission by requesting this court to dismiss the appeal with costs arguing that the grounds of appeal have no merit and the decisions of the lower court were legally justifiable.

In a short rejoinder, Mr. Mwanawima contended that the piece of land was not officially valued though the respondent bought it at shs.1,000,000/=. He was of the view that the purchase having been made in 2015 while the matter was instituted in 2019, the value of the suit land could not be less than 3m-. He went further and argued that the suit farm has evolved in terms of its value from the time it was purchased. Mr. Mwanawima insisted that, the law requires the court to satisfy itself if it has jurisdiction and the appellant had no obligation to state the value.

In a further submission, learned counsel for the appellant argued that the record they have has no document which the learned counsel for the respondent is referring to this court. According to him, their record is handwritten which does not show the genders of the members of the Ward Tribunal. In his opinion it is not clear how many days took the ward tribunal to hear the case and no record of the subsequent days. He doubted if justice was done according to the law.

I have perused the proceedings and judgments of the lower Tribunals. I have equally taken into consideration the amended petition of appeal and the submissions of the learned advocates.

For clarity and ease of reference, I undertake to evaluate each ground separately.

In the first ground of appeal, it is contended that the appellate Tribunal erred in law in failure to hold that the Ward Tribunal had no jurisdiction to entertain the matter. The records of the lower Tribunals do not show that there was any ascertainment of the jurisdiction of the Ward Tribunal in hearing on the suit and deciding it. As rightly submitted

by Mr. Mwanawima, the issue of jurisdiction can be raised at any stage even before this court as it was observed by the Court of Appeal in the case of **Tanzania - China Friendship Textile Co. Ltd. v. Our Lady of the Usambara Sisters (supra)**. Besides, I have gone through the records of the ward tribunal and I found that the outer cover is a typed paper but was filled with blue ink on 6.10. 2019. The typed paper contains a statement of claim which I hereby reproduced it for the purpose of understanding and doing justice as follows: -

“Kuvamia shamba la Mikorosho la Lidya Ngochero”

As far as the quoted extract is concerned, it does not show the value of the suit farm which the appellant claimed to have been trespassed by the respondent. Second, the statement of claim is short of the person who trespassed the suit farm. Three, the statement of claim it is silent on the size of the suit farm and the number of the cashew nut trees available in the farm. Indeed, Mr. Mwanawima cannot be faulted in his argument that there was no ascertainment that the Ward Tribunal was seized with pecuniary jurisdiction to hear and decide on the suit the appellant had instituted before it.

Generally, the appellant bore the burden of proving the value of the suit farm and make sure that the Ward Tribunal was clothed with jurisdiction to try her suit. Neither the respondent nor his counsel had that duty. After all, it is the appellant who had dragged in court the respondent and who was seeking indulgence of the Tribunal to decide on the matter.

Else, the Ward Tribunal was not right to embark on trying the suit without first satisfying itself that it had jurisdiction. Unfortunately, the

District Land and Housing Tribunal failed its duty of ascertaining if the Ward Tribunal had jurisdiction the matter which involved the parties and was in respect of a farm of unspecified size and value. There is no basis upon which this court can be sure that the law, Section 15 of the District Land Disputes Courts Act [CAP 216 R.E. 2019] was not violated. That Section provides: -

“Notwithstanding the provisions of Section 10 of the Ward Tribunal Act, the jurisdiction shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings”

was not observed.

This court has been insisting on trial Tribunal’s record to reflect the value of the suit farm or property. A clear example is the case of **Alli Kapalana vs. Omari Ligomba and 2 others** (supra) at page 4 and 5 where she observed that:

“First and foremost, the record of the proceedings did not reflect as to whether there was value approximation exercise done to determine the jurisdiction. So, if that was a yard stick as claimed record should have indicated the value of the land in the matter pending before it. And that would have determined the jurisdiction.

Since the issue of jurisdiction goes to the root of the matter and the record is silent if the Ward Tribunal had jurisdiction, the proceedings and attendant orders were a nullity. I uphold the first ground of appeal.

Coming to the second ground of appeal, my observation starts from the typed paper/claimant form of the Ward Tribunal of Namalenga which contains five names of the members as it appeared on 6.10.2019. The names include Anaphy Malango, Hamisi Kinye, Christina

Rashid, Antony Mlaponi and Christina Makokoto. I have gone through the proceedings of the Namalenga Ward Tribunal and I found no quorum was written by the secretary of the tribunal. At page one of the proceedings at the very beginning it features the following statements:

“Jamhuri ya Muungano wa Tanzania

Katika baraza la kata Namalenga

Jina Lidya Rahisi umri miaka 66

Kabila Mmakua

Dini Mkristo Makazi Namalenga”

In view of the above assertion, it is true that there is nowhere the secretary of the ward tribunal wrote the quorum of the five members of the Namalenga Ward Tribunal as their names appeared in the claimant form or typed paper of 6.10.2019. Despite that, between page 11 to 12 the Ward Tribunal of Namalenga have tried to deceive this court by appending a paper which has list of the names of the members listed in the typed paper/claimant form with their signatures but with no date, month and year when they append their signatures. As to any reasonable man would have the same view which I have on the affixed paper that was not part of the ward tribunal's proceedings. Besides, MS Awasi failed to convince this court by tendering the proceedings of the ward Tribunal of Namalenga which she perceived to have no anomalies pinpointed by her counterpart. Failure to do that, I subscribe with Mr. Mwanawima that it true that the proceedings of the Ward Tribunal of Namalenga features no names of the members of the ward tribunal and it is really not reflected in the proceedings when hearing of the matter commenced and closed. Also, there is no gender balance in the representation of the sittings of the Ward Tribunal of Namalenga. In

view of those arguments, I am convinced with what my fellow learned sisters with their observations in the cases cited by learned counsel of the appellant which have akin situation like the present case. These cases include **Osmundi Ngongi v. Florian Ndumba** (supra) and **Elizabeth Kapanga v. Holela Rashid** (supra). In view of the above cases, I am particularly interested with the holding in the case of **Osmundi Ngongi** where her ladyship at page 12 of her judgment (as she then was) stated:

“It is my considered opinion that these provisions were enacted for a good purpose. One of the purpose is clearly seen in the wordings of the law, this is representation of gender in sittings of the ward Tribunal. Therefore, it is only through the record of the ward tribunal that one can deduce that the law had been complied. Now, since the record of the ward tribunal does not show the quorum of the members who heard the case then one cannot be sure as to whether there were any members at all on 26.8.2013 or the ones shown during the judgment date were the same as those who sat during the hearing. Consequent to the foregoing it is my considered view that the omission was fatal and it occasioned failure of justice. The Rules of procedure are hand maiden of justice without which administration of justice will be at jeopardy. Therefore, the District Land and Housing Tribunal did not error to nullify the proceedings of the ward tribunal and order of retrial of the case and that decision is hereby upheld...”

In light of the above findings, I find that the learned Chairperson of the appellate tribunal ought to have dealt with these irregularities before he proceeded to hear the matter in its substance. In the upshot, section 4 the Ward Tribunals Act [CAP 206 R.E. 2019] and section 11 of the Land Disputes Courts Act [CAP 216 R.E. 2019] were violated hence

all the proceedings of the Ward Tribunal and District Land and Housing Tribunal were incurably irregular and therefore an nullity.

In the final result, I allow the appeal, declare the proceedings before the Ward Tribunal and the District Land and Housing Tribunal a nullity and set them aside.

The appellant who was the claimant/applicant at the trial Tribunal and if still desirous of pursuing her rights is directed to first ascertain the value of the suit land and then refer the matter to the Tribunal vested with competent jurisdiction to hear and determine the matter.

Each part to bear is own costs.

It is so ordered.




W.P. Dyansobera

Judge

20.7.2021

This judgment is delivered under my hand and the seal of this Court on this 20th day of July, 2021 in the presence of the Mr. Florence Mwanawima, the learned advocate for the appellant and Ms Felister S. Awasi, the learned advocate for the respondent.

Rights of appeal to the Court of Appeal explained.




W.P. Dyansobera

Judge