

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC LAND APPEAL NO. 32 OF 2021**

(Arising from Land Appeal No. 85/2019 of the District Land and Housing Tribunal – Kigoma  
before F. Chinuku, Original Land Dispute No. 2/2019 from Mkatanga Ward Tribunal)

**GIBSON KALISHANGA ..... APPELLANT**

**VERSUS**

**MARIAM YOTHAM..... RESPONDENT**

**J U D G E M E N T**

10/11/2021 & 10/12/2021

**L.M. MLACHA, J.**

This is an interesting appeal, one of the typical examples why we should be careful while handling land disputes of people who are related. Usually, as we shall see in the course of this judgment, there is another dispute which is hidden which is the cause of the land dispute. Courts should be conscious and careful when handling such cases. They must study the evidence carefully to see if it reflects the reality. If the courts will not do so, they may end up adding fuel to the burning house.

It is the story of two related people namely, Gibson Kalishanga (hereafter to be referred to as the appellant) and Mariam Yotham (hereinafter to be refereed to as the respondent). The appellant is the

respondent's brother in law. He is a brother of her husband. The record shows that he sent the respondent at Mkatanga Ward Tribunal in Application No. 2/2019 seeking eviction orders to eject her from the Land where she is living with her children. He told the ward tribunal that he left to Tabora some years back for some economic gains leaving the land to the respondent's husband. On coming back, he requested him to vacate and leave the land for his own uses. His brother agreed and vacated. The respondent refused.

The respondent on being asked to give her story she said that the appellant had no power to eject her from the land where she had lived from 1987. She requested the tribunal to call her husband for further details. The ward tribunal did not find it necessary to call the husband. It believed the appellant and ordered the respondent to vacate from the suit premises. The respondent appealed to the District Land and Housing Tribunal for Kigoma (the DLHT) in Land Appeal No. 85/2019. The appeal was struck out. It was said that the proceedings and decision of the ward tribunal were bad in Law for being in excess of the coram contrary to section 11 of the Land Disputes Courts Act, Cap 216 R.E. 2019 because it had 9 instead of 8 members. The appellant did not see justice in the decision and has come to this court by way of appeal.

The grounds upon which the appeal is based can be put as under: -

- 1. That, the judgement of the DLHT is bad in Law because it is Swahili.*
- 2. That, there was no problem of coram of members at the ward tribunal because the secretary of the ward tribunal is not a member of the tribunal.*
- 3. That, there was good evidence to show that the appellant is the Lawful owner of the suit land.*

The parties appeared in person, unrepresented. They addressed the court orally. The appellant told the court that the decision of the ward tribunal is bad in Law for containing 9 members instead of 8. He went ahead and said that he got the land from his mother after the death of his father who died in 1974. He said that the disputed land is ½ an acre, adding that he has no conflict with his brother but the respondent who have refused to vacate. The respondent submitted that the suit land has 3 houses where she lives with her children. The houses are family houses which she built with her husband. And that she has lived there since 1987 and has since then given 9 children to her husband. But of recent, her husband has married another wife making their relations to be bad. He is now using the appellant to evict her so that he can live in the area with her new wife. The woman said this while in tears. She was in the company

of two of her children who supported her story. One of them is married and lives in one of the houses.

Given this unusual trend of things and guided by the oxygen principle and section 95 of the Civil Procedure Code the court adjourned the case and demanded the appearance of the respondent's husband. He came to court in the company of other relatives. In an off record discussion which was invited to discuss the unusual story, it was seen clearly that the case which was filed at the ward tribunal was nothing but a mockery of justice, an abuse of the legal process of the highest order. There is no land case but a matrimonial dispute between the respondent and her husband. The husband, admittedly so, has married another wife and is living with her somewhere else. He appeared to have plans to come back to the matrimonial home once the respondent is evicted.

With that background, let us now go to examine the grounds of appeal. I have no problems with ground one because the language of the DLHT has now changed from English to Swahili. The judgement was therefore properly written and there was no problem with that.

I have a serious problem with ground two. It touches the coram of the ward tribunal. For future guidance and easy of reference, I will reproduce section 11 of the Land Disputes Courts Act and section 4 and



5 of the Ward Tribunals Acts, 1985. These are the relevant provisions. I have used the Swahili version of the Ward Tribunals Act for clarity purposes and guidance for the language of the DLHT and ward tribunals is now Swahili.

Section 11 of the Land Disputes Act reads thus;

*"11. Each Tribunal shall consist of **not less than four nor more than eight members** of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act, 1985."*[Emphasis added]

Sections 4 and 5 of the Ward Tribunals Act read as under;

*"4. (1) Kila Baraza litakuwa na-*

*(a) **Wajumbe wasiopungu wane wala kuzidi wanane** watakachaguliwa na kamati ya Kata kutoka miongoni mwa majina ya wakazi wa Kata yaliyoorodheshwa kwa kuzingatia uratatibu maalum uliowekwa;*

*(b) **mamlaka maalum itamteua Mwenyekiti wa Baraza kutoka miongoni mwa watu waliochaguliwa kwa mujibu wa aya ya (a) hapo juu.***

*(2) kutakuweco na Katibu wa Baraza atayeteuliwa na mamlaka ya serikali za mitaa inayohusika na eneo iliko*

*hiyo kata; kwa kuzingatia mapendekezo ya Kamati ya Kata.*

*(3) Mtu yeyote hatateuliwa kuwa Katibu wa Baraza isipokuwa kama ni mkazi wa Kata kulikoundwa hilo Baraza.*

*(4) Kiwango cha mkutano kwa kikao chochote cha baraza kitakuwa ni nusu ya idadi ya wajumbe wote.*

*(5) Katika kikao chochote cha Baraza uamuzi unaoungwa mkono na walio wengi kati ya wajumbe waliohunduria utahesabiwa kuwa ndio uamuzi wa Baraza na endapo kutatokea kura za pande mbili kuwa sare, basi **Mwenyekiti atakuwa na haki ya kupiga kura ya uamuzi pamoja na kura yake ya awali.***

*5. - (1) Mtu yeyote hatakuwa na haki ya kuteuliwa kuwa mjumbe wa Baraza iwapo mtu huyo ni-*

*(a) Mbunge*

*(b) mjumbe wa halmashauri ya Kijiji na Kamati ya Kata.*

*(c) mtumishi wa serikali.*

*(d) mwanasheria au mtu yeyote aliyeajiriwa katika idara ya Mahakama.*

*(e) mtu ambaye hajatimiza umri wa miaka kumi na nane.*

*(f) mtu mwenye ugonjwa wa akili.*

*(g) mtu aliyepata kutiwa hatian kwa kosa la jinai la utovu wa uaminifu.*

*(h) mtu ambaye si Raia wa Jamhuri ya Muungano wa Tanzania.*

***(2) Hakuna mtu yeyote atakayependekezwa awe katibu wa Baraza isipokuwa tu kama mtu huyo kwa maoni ya Kamati anao ujuzi wa kutosheleza wa kusoma na kuandika na anayo elimu ya kutosha inayomwezesha kufanya vizuri kazi za Katibu na kwa kuridhisha.***

***(3) Katibu wa Baraza atahudhuria vikao vya Baraza na kuandika kumbukumbu ya shughuli zote za vikao vyake lakini hatakuwa na haki ya kushiriki katika kutoa maamuzi.*** "[Emphasis added]

Reading from section 11, one can see that the ward tribunal is supposed to have a minimum number of 4 members and a maximum number of 8 members, of whom three shall be women. It means that, where it sits with its maximum number of 8 members, at least 3 members should be women. The number of women members may exceed 3 but should not be less than 3. The Law is silent on the minimum number of the women when the tribunal sits with its minimum coram of the 4 but it is generally agreed that there must be at least one woman. Section 11 of

the Land Disputes Courts Act takes us to section 4 of the Ward Tribunals Act.

Sections 4 and 5 of the Ward Tribunals Act are inseparable. They tell us, among other things, who is a member of the tribunal. They also give us the status of the Chairman and secretary. Section 4 (1) (a) repeats what is provided in section 11 of the Land Disputes Courts Act that, the members should not be less than 4 and not exceeding 8. Subsection (1) (b) provides that, the Chairman shall be selected from the members. There is no such a provision in respect of the secretary. In other words, there is no provision which says that the secretary shall come from the members. While there is no provision which says that the secretary shall come from the members, section 4 (5) which carry the decision making process, says that the decision shall come from the vote of majority of members present and gives the Chairman a casting vote. Section 5 (3) says that the secretary shall attend but shall not have a right to **vote**. You will now see that whereas the Chairman comes from the 8 members and have a right to vote plus a costing vote, the secretary does not come from the members and has no right to vote. It is obvious that the secretary of the ward tribunal is just an official of the council attached to the tribunal for record keeping. It follows that, the existance of the secretary in the list did not change the coram of the ward tribunal because he is not a



member. With this finding, the decision of the DLHT is found to have no legal basis.

In ground three, the appellant alleges that there was evidence showing that the land is his. I have considered this aspect. As pointed out, there is no land dispute in this case but a matrimonial dispute. This is very clear and needs no evidence to establish. It is out of imagination to find a situation where the wife is being evicted from the homestead and the husband, the father of the family, is supporting the move. He is at peace. This defeats logic for the eviction of the wife includes the husband. It cannot happen save where there is some underground communications and evil mind between the one who is doing it and the husband. This is exactly what happened in this case.

Finally, on the period of stay. The record shows that the respondent has stayed in the suit land from 1987 when she was married up to 3/4/2019 when the case was filed at the ward tribunal. That is over 31 years. It is thus obvious that, even if we can call this to be a land case, then the suit was bad in Law for the Law of Limitation Act provides a maximum period of 12 years.

For what has been demonstrated above, this being an appeal based on cooked facts and an evil mind, it cannot be left to stand. The

proceedings and decisions of the lower tribunals are tainted with illegalities and cannot be left to stand. I exercise the revision jurisdiction of this court contained in section 43 (1) of the Land Disputes Courts Act, Cap 216 R.E. 2019 to revise and vacate the proceedings and decisions of the lower courts and set them aside. I direct that the respondent should proceed to live with her family in the suit land without being disturbed until decided otherwise by a court of competent jurisdiction. It is ordered so. The respondent shall have her costs here and below.



L.M. Mlacha

**JUDGE**

**10/12/2021**

**Court:** Judgment delivered in the presence of both parties and the entire family. Right of appeal explained.



L.M. Mlacha

**JUDGE**

**10/12/2021**