

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC. LAND APPEAL NO. 69 OF 2021

(Arising from Ntobeye Ward Tribunal Land Case No. 06 of 2018 and Land Appeal No. 21 of 2018 of Ngara District Land and Housing Tribunal)

LEONARD MREFU.....APPELLANT

VERSUS

ANNA PETRO.....RESPONDENT

JUDGMENT

Date of Judgment: 10.12.2021

Mwenda, J.

Before Ntobeye Ward Tribunal, the appellant who stood as the applicant, successfully sued the respondent in Civil Case No. 06 of 2018 where at the end of the judicial day it was decided partly on the applicant's (appellant's) favour and partly on the respondent's favour. The appellant was declared the lawful owner of 60 paces of the land bordering the road towards the Hill side at his children's graveyard and the remaining portion was declared the respondent's property.

Aggrieved by the decision of the Ward Tribunal, the Appellant filed Land Appeal No. 21 of 2018 before the District Land and Housing Tribunal for Ngara where upon hearing the parties submissions the Hon. Chairman upheld the findings reached by the Ward Tribunal.

Aggrieved by the findings of the District Land and Housing Tribunal, the appellant preferred this appeal which contain seven grounds.

When this appeal came for hearing the appellant was represented by Mr. Gildon Mambo, learned counsel and the respondent enjoyed the services of Mr. Fahad learned counsel.

Submitting in support of grounds of appeal, Mr. Gildon Mambo prayed to abandon the 2nd to the 7th ground thereby remaining with the first ground. The first ground of appeal state that the appellate Tribunal erred in law and fact for failure to identify that the trial tribunal's proceedings was a nullity for failure to indicate the quorum of its members in all sittings.

Summarily Mr. Mambo submitted that the records/proceedings of the Ward Tribunal did not record the quorum of members who participated in the proceedings. He said it is difficult to contemplate if the requirement to have four (4) members as stated by law was complied with. He said this anomaly is contrary to S.11 of the Land Dispute court's Act, [Cap 216 RE 2019] and the Ward Tribunal's Act, [Cap 206 RE 2002]. In support to his argument Mr. Mambo cited the case of **Edwin Kasweigabo and one another vs. Adventina Grevazi, Misc. Land Appeal No. 33 of 2021** (unreported). He said in that case this court categorically stated that the quorum of the Ward Tribunal shall be maintained in all sittings. He

concluded his submission with a prayer that the lower Tribunal's proceedings be nullified and judgment and orders emanating therefrom be quashed and set aside.

In reply to the submission by Mr. Mambo, Mr. Fahad supported Mr. Gildon's argument but added that while in the typed judgment the quoram is recorded, the proceedings is silent to that effect and this make the judgment by both tribunals illegal. He prayed for an order to quash the proceedings and judgment and any other order of lower tribunal.

Having summarized the submission by both parties' counsels, the issue for determination is whether this appeal is meritorious. With regard to the first ground of appeal, this court perused the records of the Ward Tribunal in Land Case No. 6 of 2018 only to note there is no quoram recorded in the whole proceedings.

It is trite law that during every trial before the tribunal, the said tribunal must be properly constituted. Section 4(1) (a) of the Ward Tribunal's Act [Cap 206 R.E 2002] state in the following words as follows:

"Every Tribunal shall consist not less than four nor more than eight other members elected by the ward committee from among a list of names of persons resident in the ward compiled in the prescribed manner."

Again Section 4 (3) of the Ward Tribunal's Act (supra) provides.

"The quoram at a sitting of a tribunal shall be one half of the total number of members"

Basing on the provisions cited above failure by the ward tribunal to record quoram, is a serious irregularity.

In the case of **Edwin Kekwesigabo and Another vs. Adventina Gerevazi, Misc. Land Appeal No. 33 of 2021** (unreported) this court held inter alia that:

"The quoram of the Ward Tribunal should be maintained in all sitting".

That being said, I agree with the submissions by both counsels for the respondent and the appellant that failure to show the quoram entail there was violation of clear provisions of law and as a result the whole proceedings of the Ward Tribunal is a nullity.

Since the Land Appeal No. 21 of 2018 emates from Land Case No. 06 of 2018, Ntobeye Ward Tribunal whose proceedings are nullified then it is automatically lack legs to stand on.

This court therefore finds merits on the first ground of appeal. Both lower tribunal's proceedings, judgment and orders arising therefrom are quashed and set aside. Each party shall bear its own costs.

Any party interested to pursue his rights may prefer a fresh suit before a competent tribunal.

It is so ordered.




A.Y. Mwenda

Judge

10.12.2021

This Judgment was delivered in chamber under the Seal of this Court in the presence of the learned counsel for the appellant Mr. Gildon Mambo and in the presence of the learned counsel for the Respondent Mr. Fahad.




A.Y. Mwenda

Judge

10.12.2021

