

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

MISC. LAND APPEAL NO. 16 OF 2020

(Arising from Judgment and Decree of Appeal case No. 54 of 2017 before District Land and Housing Tribunal for Singida which originated from case No. 1 of 2017 before Mkiwa Ward Tribunal at Mkiwa)

SALUMU ITAMBU.....APPELLANT

VERSUS

JOSEPHAT NJIKU.....RESPONDENT

23/11/2021 & 14/12/2021

JUDGMENT

MASAJU, J

The Appellant, Salum Itambu, unsuccessfully sued the Respondent, Josephat Njiku, in Land Dispute No. 1 of 2017 before Mkiwa Ward Tribunal. His Land Case Appeal No. 54 of 2017 against the Respondent before the District Land and Housing Tribunal for Singida was also unsuccessful, hence this Appeal in the Court.

The Appellants' Petition of Appeal was made up of two grounds of appeal including the 1st ground that; the coram of the trial tribunal was not duly constituted.

The respondent contests the appeal and there was his Reply to the Petition of Appeal to that effect as he denied the two grounds of appeal

putting the Appellant to strict proof thereof. Despite the Respondents' disparate argument that the appeal was not legally before the Court being filed out time, there is ample proof that the Court did sanction the Appellant to appeal out of time accordingly.

When the Appeal was heard in the Court on the 11th day of May, 2021 and 23rd day of November, 2021 the Appellant was represented by Ms. Estomih Haule, the learned counsel whilst the Respondent appeared in person.

On the said ground of appeal about the illegal coram of the trial tribunal the Appellant drew the Attention of the Court to **Mwita Wiranga V Pilly Sincha** (HC) Misc. Land Appeal No. 70 of 2020, Musoma Registry, (Unreported), **Maiko Mtafya & 3 others V. Eckson Mtafya** (HC) Misc. Land Appeal No. 20 of 2019, Mbeya Registry (unreported), Section 11 of the Land Disputes Courts Act, [Cap 216 RE 2019], and Sections 4(1) (a) (2) and 5 (3) of the Ward Tribunals Act, [Cap 206] on the coram composition of the Ward Tribunal and the secretary to the tribunal and his role. That, the trial tribunal coram was not duly constituted because only two women took part in the trial of the dispute and that the secretary to the tribunal also participated in decision making of the tribunal contrary to the law. The Respondent prayed the Court to allow the Appeal, quash and set aside the decision of both the trial tribunal and the appellate tribunal thereof along with the proceedings thereof with costs.

The Respondent contested the Appeal and adopted his Reply to the Petition of Appeal to form part of his submissions against the Appeal as he also challenged the legality of the Appeal in the Court allegedly for its being filed in the Court out of time.



The Court having gone through the record of the trial tribunal has learned that the coram of the trial tribunal was made up of 8 persons namely the chairman, the secretary, and six members on the two days it sat to consider the dispute between the parties on the 20/4/2017 and 11/5/2017. This was conspicuously illegal because whilst the composition of Ward Tribunal is not less than four nor more than eight members of whom three shall be women, as so provided for under Section 11 of the Land Disputes Courts Act, [Cap 216 RE 2019], the coram of the Ward tribunal when adjudicating upon land disputes is provided for in section 14 of the Land Disputes Courts Act, [Cap 216 RE 2019] that the tribunal shall in all matters of mediation consists of three members at least one of them shall be a woman and that chairman to the tribunal shall select all three members including a convener who shall preside at the meeting of the tribunal.

That is to say, coram made of all members of the Ward Tribunal including the secretary to the tribunal must be illegal. This Court has so many times decided on the difference between the composition of the Ward Tribunal and the coram of the tribunal under section 11 and 14 respectively of the Land Disputes Courts Act, [Cap 216 RE 2019] including in **Adam Kishaluli V.Lazaro samwel Mlata** (HC) Misc. Land Appeal No. 37 of 2020, Dodoma Registry (unreported) and **Daud Salua Masisila V Idd sharia Mashoto** (HC) Misc. Land Appeal No. 36 of 2020, Dodoma Registry (unreported).

That said, the illegally constituted Tribunal cannot make a coram which can come up with a legally binding decision on a dispute. It follows therefore that the illegal constituted trial tribunal's proceedings, decision and the order thereof in the instant dispute Land Case No. 1 of 2017 in Mkiwa Ward Tribunal cannot survive the test of legality hence a nullity along with the

decision and proceeding of the appellate tribunal in Land case Appeal No. 54 of 2017 in the District Land and Housing Tribunal for Singida thereof.

By virtue of the Court's revisionary powers, in Section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216 RE 2019] the meditorial proceedings and the decisions of the dispute between the parties before the trial tribunal along with the appellate tribunal's record of proceedings and judgment thereof are hereby severally and together nullified, quashed and set aside accordingly. Except if the parties reach amicable settlement, the land dispute between them shall be heard *de novo* before the legally constituted coram of another set of members in the trial tribunal accordingly in accordance with section 14 of the Land Disputes Courts Act, [Cap 216 RE 2019]. The parties shall bear their own costs.


 **GEORGE M. MASAJU**
JUDGE
14/12/2021