

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**LAND APPEAL NO. 14 OF 2021**

*(Originating from Land Case No. 3 of 2017 of Kishogo Ward Tribunal and arising from Land Appeal No. 34 of 2018 of the District Land and Housing Tribunal at Bukoba)*

**TWAHA OMARY.....APPELLANT**

**VERSUS**

**ARIKADI MGANDA.....1<sup>ST</sup> RESPONDENT**

**GASPER SIMON.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*18<sup>th</sup> May & 27<sup>th</sup> May 2022*

***Kilekamajenga, J.***

This case originated from Kishogo Ward Tribunal in land case No. 03 of 2017 where the appellant sued the first respondent for encroachment into his land and cutting trees allegedly belonging to the appellant. The Ward Tribunal heard the parties and their witnesses and finally decided in favour of the appellant. Thereafter, the 1<sup>st</sup> respondent appeared to the District Land and Housing Tribunal for Kagera at Bukoba vide land appeal No. 34 of 2017. However, in that appeal, the 1<sup>st</sup> respondent joined the 2<sup>nd</sup> respondent who was not among the parties before the Ward Tribunal. In its decision, the District Land and Housing Tribunal quashed the judgment and proceedings of the Ward Tribunal on the reason that the Ward tribunal was not full composed because the members exceeded the required number. Aggrieved with the decision of the appellate tribunal, the appellant appeared before this Honourable Court seeking for justice.



He coined four grounds of appeal to challenge the decision of the District Land and Housing Tribunal thus:

- 1. That, the first appellate tribunal chairman erred in law and fact to fail to exercise his discretion judiciously by awarding costs to the 1<sup>st</sup> respondent for the wrong committed by the Ward Tribunal and not the appellant herein at whatsoever situation.*
- 2. That, the first appellate tribunal erred in law and fact to entertain the matter wrongly filled before it for joining on appeal the new party who was not a party at the trial case (sic) and the tribunal said nothing about it.*
- 3. That, the first appellate tribunal erred at law and fact to fail to ascertain that the coram was correct as the last member did not sign and the appellant was told by the trial tribunal that one of the signing member (sic) was in the capacity of the secretary.*
- 4. That, at large, the first appellant tribunal was biased for punishing the appellant for wrongs committed by the Ward Tribunal and not the appellant and he had nothing to do on that.*

When the appeal came for hearing, the appellant appeared in person and was ready to defend his case though he had no representation. On the other hand, the respondents were absent despite being dully served the summons to appear. The finally ordered the case to proceed for hearing in the absence of the respondents. During the hearing, the appellant's oral submission was hinged on his dissatisfaction with the finding of the District Land and Housing Tribunal. He argued that, even if the Ward Tribunal could not be fully composed, the appellate tribunal was supposed to order the case to start afresh. He further


argued that, even the assessor's opinions were not solicited by the tribunal chairman before composing the judgment.

The submission from the appellant brings this court to the determination of the appeal at hand. Considering the grounds of appeal and other information contained in the file, there are two points worthy determination in this case; first, whether the Ward Tribunal was full constituted when determining this case. According to the Ward Tribunal's proceedings, the case was heard when the tribunal was composed with six members. One of those members (Phides John) was a woman. However, one of those members did not sign the judgment, still, the composition of the Ward Tribunal remained with five members. According to **section 11 of the Land Disputes Courts Act, Cap. 216 RE 2019**, the Ward Tribunal is full composed when sits with not less than four and not more than eight members. The section provides that:

*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.*

The composition of the Ward Tribunal is also provided under section 4 of the Ward Tribunals Act, Cap. 206 RE 2002 thus:

*4.(1) Every Tribunal shall consist of-*



*(a) not less than four nor more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;*

*(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).*

*(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.*

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

*(4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote. (Emphasis added).*

Therefore, the composition of the Ward Tribunal is always not less than four members and not more than eight members. When the Ward Tribunal sits with four members, at least one of them should be a woman and when it is composed with eight members, then three members must be women. In determining the composition of the tribunal, the secretary is not among the members envisaged by the above provisions of the law. It was therefore wrong for the first appellant tribunal to decide that the Ward Tribunal was not full composed while there were more than four members who sat to determine this case. I therefore find merit in

the appeal and hereby allow it. I set aside the decision of the District Land and Housing Tribunal and uphold the decision of the Ward Tribunal. It is so ordered.

Dated at Bukoba this 27<sup>th</sup> Day of May 2022.



**Ntemi N. Kilekamajenga**

**JUDGE**

**27<sup>th</sup> May 2022**

Court:

Judgment delivered this 27<sup>th</sup> May 2022 in the presence of the appellant but in the absence of the respondents.



**Ntemi N. Kilekamajenga**

**JUDGE**

**27<sup>th</sup> May 2022**

