

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 87 OF 2021

(Arising from Misc. Application No 102 of 2021 of District Land and Housing Tribunal for Tarime at Tarime, Originating from Land Case No 07 of 2020 at Nyarokoba Ward Tribunal)

NCHAGWA MWITA CHACHAAPPELLANT

VERSUS

MAHENYE MWITA MARWA RESPONDENT

JUDGMENT

27TH & 27TH May, 2022

F. H. Mahimbali, J

The appellant herein one Nchangwa Mwita Chacha is aggrieved by the decision of the Nyarokoba Ward Tribunal. As he was out of time, he filed Misc. Application No 102 of 2021 at the District land and Housing Tribunal of Tarime for extension of time to file his appeal. The said application was dismissed for want of good reason of extending time as prayed.

For reasons to be stated shortly, the grounds of appeal will not be reproduced.

During the hearing of the appeal, both parties were unrepresented, they thus fended for themselves. Each party prayed that what they filed in court in support and opposition of the appeal be adopted to form part of the case's submission.

In the course of composing this judgment, I came to note one important legal irregularity that the members who constituted the trial tribunal in hearing of the case are not mentioned. I have urged the parties to address me on that legal anomaly.

On his part, the appellant said that as per this legal anomaly, the proceedings are nullity, they be quashed. The respondent on the other hand wondered if it is proper for this court to intervene on that as it is only supposed to consider the merit of the appeal.

In my considered view, I find this irregularity is vivid. The members' names are only seen at the annex of the judgment. As who heard the matter, the proceedings are silent. This is a contravention of section 11 of the Land Dispute Court Act, Cap 216 R. E. 2019. As the

minimum number of constituting members of the Ward Tribunal is 4 and the maximum is 8, the quorum at a sitting shall be half of the total members (section 4 (3) of the Ward Tribunal Act Cap 206). The names of the constituting members of the trial Ward Tribunal and their genders in each day of proceedings in respect of a particular case must thus, be clearly established in the case's proceedings. Failure of which renders the trial/ proceedings thereof defective and of no legal effect.

In consideration of the mandatory legal requirement as well dealt with by the court in **Mwita Sasi vs Sabinus Sabata and Another**, Misc. Land Appeal No. 126 of 2014 and the case of **Musa Onani Nosa Maige**, Land Appeal No 20 of 2020 High Court Mwanza, the omission is fatal and incurably, defective.

For the aforementioned reasons, the proceedings and orders of the two lower tribunals do not carry any legal value. I thus allow the appeal, quash the proceedings of the two lower tribunals and their resulting orders set aside for being nullity.

For an obvious reason that the error was not occasioned by any party but the trial tribunal itself, I order no costs.

Any party with interests of the said dispute if it still persists, may file fresh proceedings as per current regime on the administration of land disputes.

It is so ordered.

DATED at MUSOMA this 27th day of May, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 27th day of May, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.

F. H. Mahimbali

Judge

27/05/2022