

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 19 OF 2022

(From the Judgment of the District Land and Housing Tribunal of Mara District at Musoma, In Land Appeal No 72 of 2021 and Originating Ward Tribunal of Bukima Ward in Application No 25 of 2020)

PRISCA MANYAMA MLAGAAPPELLANT

VERSUS

MANG'ARA MWIJARUBI RESPONDENT

JUDGMENT

27th and 27th May, 2022

F. H. Mahimbali, J.:

In this appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma, the appellant herein appeals against the decision in land Appeal No. 72 of 2021. The appeal traces its origin from the decision of Bukima Ward Tribunal in Land case No 25 of 2020.

There are a total of eight grounds of appeal preferred by the appellant.

For reasons to be established as I go along, I find it of no any essence to mention them.

When the matter was set for hearing today, Ms. Mary Joachim for the appellant basing only on ground two of the petition of appeal emphasized that the proceedings of the trial Ward Tribunal are fatally irregular and thus defective for want of disclosure of the trial tribunal members constituting the quorums of the trial tribunal.

She submitted that pursuant to section 11 of the land Disputes Courts Act Cap 216 read together with section 4 of the Ward Tribunal Act, Cap, 206, R. E. 2019, talk of the composition of the Ward Tribunal. That failure to indicate the names and gender of the members constituting the tribunal renders the proceedings defective.

In support of the assertion, she referred this court to the following cases. **Jenipher Amos Richard vs Pili Zachayo**, Land Appeal No 184 of 2015. High Court Mwanza and **Mwita Sasi vs Sabinus Sabanya and Maro Chacha**, High Court Mwanza to mention but a few.

As the proceedings are nullity, she prayed that this court to nullify all the proceedings and orders from the two lower tribunals and order retrial of the matter.

The respondent on the other hand had nothing useful to argue on the issue, but just left it for the court to decide what is right as per law.

I have gone through the judgment and proceedings of the two lower tribunals. I am satisfied that the trial tribunal's proceedings dated 4th January 2021 and 29/1/2021 in which trial proceedings took place, the names and genders of the constituting members of trial tribunal are not mentioned. The members' names (without their gender) are just mentioned on the proceedings of 14th December, 2020 and on the date of judgment. This is in contravention of section 11 of the Land Disputes Court Act, Cap 216, R. E. 2019. As the minimum number constituting members of Ward Tribunal is 4 and the maximum is 8, the names of the constituting members and their genders in each day of proceedings in respect of the particular case must be established in the case's proceedings. Failure of which, renders the trial/proceedings 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 Sabanya and another**, Misc. land Appeal No 126 of 2014 and the case of **Musa Onani Nose Maige**, Land Appeal No 29 of 2010, High Court Mwanza, the Omission is fatal and incurably defective.

For the aforementioned reasons, I agree with Mary Joachim, Leaned advocate that the proceedings of the two lower tribunals do not carry any legal value. I allow the appeal, set aside the judgment of the two lower tribunal and quash all the proceedings thereof for being nullity. For obvious reasons that the error was committed by the trial tribunal itself, I order no costs.

Any party still with interests of the said dispute, 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 the respondent, Ms. Mary Joachim, Advocate for the appellant, and Mr. Gidion Mugo, RMA.


F. H. Mahimbali

JUDGE

27/05/2022