

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**Misc. LAND APPEAL CASE No. 111 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in  
Land Appeal No. 49 of 2020 Originating from Kyang'ombe Ward Tribunal in  
Land Case No. 9 of 2019)*

**JOSEPH SIAGI SINGWE ..... APPELLANT**

*Versus*

**BONIPHACE MARWA WANG'ANYI ..... RESPONDENT**

**JUDGMENT**

21.06.2022 & 21.06.2022

**Mtulya, J.:**

The Parliament in this State of the United Republic of Tanzania in 2002 invited the members of Parliament in the Capital City of the State, Dodoma to sit and enact a statute for establishment of land disputes settlement machinery and incidental land issues. The enacted law was cited as **Courts (Land Disputes Settlements), Act No. 2 of 2002**, and currently named as the **Land Disputes Courts Act** [Cap. 216 R.E. 2019]. In the present judgment, I will call it *the Act*. In the Act, the members inserted section 11, which was drafted in the following words:

*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 Tribunal Act.*

(Emphasis supplied).

The referred section 4 of the **Ward Tribunals Act** [Cap. 206 R.E. 2002] (the Ward Tribunals Act) provides for composition of the members of the Ward Tribunal, but is silent on number of women members. Therefore, it was obvious that section 11 of the Act was enacted with a touch on gender sensitivity in land disputes decision making bodies. The mandate of the ward tribunals in deciding land matters originated from the provisions of section 62 (1) (d) of the **Village Land Act** [Cap 114 R.E 2019] (the Village Land Act) and section 167 (1) (d) of the **Land Act** [Cap 113 R.E 2019] (the Land Act).

From the enactments, it is obvious that section 11 of the Act and all other cited laws above support women participation in determining land disputes filed in ward tribunals. However, the provision in section 11 of the Act is silent on the execution of the gender issue in ward tribunals. Similarly, the section is silent on steps to be taken when wards tribunals have no required number of the three (3) women members. The gaps had received two (2) directives from two higher courts in judicial hierarchy, namely: the Court of Appeal (the Court) and High Court (the court).

The Court in the precedent of **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, after citation of section 11 of the Act and section 4 of the Ward Tribunals Act, at page 5 of the judgment, stated that:

*The above recited provisions of law clearly and mandatorily require that a properly constituted ward tribunal shall consist of at least four members, and not more than eight members, **three of whom being woman.***

(Emphasis supplied).

The Court after perusing the record of appeal before it, noted that the **Uyowa Ward Tribunal** based within the jurisdiction of Tabora Region sat with only three (3) members and none of them was a woman, and determined **Land Dispute No. 10 of 2013**, to the finality without being disturbed with the numbers or gender issue. Following the faults in the record, the Court at page 6 of the judgment observed that:

*It is thus very apparent that throughout the trial, it is only three members who participated and finally decided the case contrary to section 11 of the Act which require that in constituting the ward tribunal, the least number of members should be four members. If we may add, the other element in the composition of the trial tribunal*

*was the fact that **the issue of gender was completely not observed of the three members who participate in the trial, none of them was a woman contrary to the mandatory requirement of the law.***

(Emphasis supplied).

Finally, the court stated the available remedies in such circumstances:

*The failure and the irregularity by the trial tribunal to observe the mandatory requirement on the composition of the tribunal, did not only vitiate the proceedings and the resulting decision of the trial tribunal, but it also rendered the trial tribunal lack jurisdiction to try the case.*

On the other hand section 11 of the Act had already received precedent of this court in **Anne Kisonge v. Said Mohamed**, Land Appeal No. 59 of 2009 before the precedent in **Edward Kubingwa v. Matrida A. Pima** (supra). While the Court was disturbed by the number of women members, this court was worried by failure to reflect members' participation on each day of trial and display of their gender. The mostly cited passage of the decision is hereby reproduced for easy appreciation of the matters:

*My interpretation of the cited law is that: **the names and gender of the members participating in a case in***

*the ward tribunal must be shown in order to ascertain its composition as whether it is in compliance with the law. Those members who participated during trial, their names and gender must be recorded on coram on each day the trial takes place up to the stage of judgment. Failure to follow proper procedure, it is a difficult to know as in this case, the members who participated to compose the judgment were the same as those who appeared during trial.*

(Emphasis supplied).

Following the two (2) precedents of our higher courts in judicial hierarchy, it was certain and settled that our customs and traditions of degrading women participation in land disputes decision making bodies were altered to abide with the new enactment in section 11 of the Act and pronouncements of the higher courts as indicated in the above cited precedents.

Despite the new enactment in section 11 of the Act and directives brought by the courts of record to fill the gaps in section 11 of the Act, practice on ground in some ward tribunals remained the same. I will expound: On 13<sup>th</sup> February 2020, **Mr. Boniphace Marwa Wang'anyi** (the respondent) approached **Kyang'ombe Ward Tribunal** (the ward tribunal) and preferred **Land Dispute No. 4 of 2020** (the dispute) against **Mr. Joseph Siagi Singwe** (the

appellant) for a land located at Muhundwe Village within Kyang'ombe Ward, Suba Division in Rorya District of Mara Region.

The record of appeal shows that on 17<sup>th</sup> February 2020, proceedings started and completed on 19<sup>th</sup> March 2020, when the decision of the tribunal was rendered down. During the proceedings, five (5) members participated and only one woman was invited to participate in the proceedings and decision making in the dispute, namely: **Suzana N. Revocatus**. Other members were: **Sebastian Makoranga, Ibrahim Segere, Josephate Mirumbe** and **Wambura Osora**.

Finally, the ward tribunal determined the dispute in favour of the appellant. The decision aggrieved the respondent who preferred **Land Appeal No. 49 of 2020** at the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal), which reversed the decision of the ward tribunal. The decision also irritated the appellant who preferred the present appeal filed in this court and named: **Misc Land Appeal Case No. 111 of 2021** (the Misc. Land Appeal). The Misc. Land Appeal was scheduled for hearing in this court today at 09:00 hours and the parties appeared themselves without any legal representation to register relevant materials during the appeal hearing. The parties were in possession of their arsenals readily to strike each other in favour and against the appeal.

However, this court, upon perusal of the record, noted the faults of the ward tribunal in declining to invite minimum number of women members to participate in the proceedings as per requirement of the law and precedents. The faults needed an immediate intervention of this court on proceedings and decisions of the lower tribunals, but this court could not proceed on its own. Therefore, the court raised the matters *suo moto* and requested the parties to reserve their arsenals for a while in favour of understanding of the law in section 11 of the Act and cited precedents in **Edward Kubingwa v. Matrida A. Pima** (supra) and **Anne Kisonge v. Said Mohamed** (supra).

As the parties were lay persons, and this court being aware of the right to be heard enshrined in the article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedents in **Oysterbay Villas Limited v. Kinondoni Municipal Council & Another**, Civil Appeal No. 110 of 219 and **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, it explained the matters to the parties and invited them to appreciate the right to be heard.

The appellant on his part briefly stated that this court is the high court and may decide according to the text of the law and has no mandate to go against the requirement of the law, whereas the respondent prayed this court to follow the enactment of land laws

and submitted that he is ready to receive decision of this court. Finally, the respondent stated that the court may wish to decide according to the law and on his part he will prefer a fresh and proper suit, when necessary to do so.

This court after receipt of the parties' submissions and noting the provision of section of 11 of the Act and precedents in **Edward Kubingwa v. Matrida A. Pima** (supra) and **Anne Kisonge v. Said Mohamed** (supra), decided to abide with the settled law in the cited statute and precedents. The course in following the precedents is necessary for the sake of predictability and certainty of precedents emanating from this court and part of cherishing the directives of the Court and intention of the drafters of section 11 of the Act.

In the end, I have decided to quash decisions and set aside proceedings of the district and ward tribunals below for want of proper application of laws (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021).

This dispute is supposed to receive a *trial de novo* order from this court. However, there is new enactment in place which was brought by section 45 of the **Written Laws (Miscellaneous Amendment) (No. 3) Act No. 5 of 2021**, which amended section



13 (2) and 16(1) of the Act to strip off powers of the ward tribunals. In such circumstance, it will not be practicable to order *trial de novo*. I have therefore decided to let it to any of the parties, if so wish, to prefer a fresh and proper land dispute in accordance to the current laws and procedures regulating land disputes in a competent forum authorised to resolve land disputes.

I am aware the parties have incurred costs in prosecuting the present dispute, but I make no any order as to costs for obvious reason that the parties are lay persons and the wrong on declining to call women members was committed by the ward tribunal and blessed by the district tribunal. In any case, the dispute may take its course again in a near future to identify the rightful owner of the disputed land. Ordered accordingly.



Right of appeal explained to the parties.

F. H. Mtulya

**Judge**

21.06.2022

This judgment was delivered in chambers under the seal of this court in the presence of the parties, **Mr. Joseph Siagi Singwe**, the appellant and **Mr. Boniphace Marwa Wang'anyi**, the respondent.

F. H. Mtulya

**Judge**

21.06.2022