

**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. 4 OF 2022**

*(Arising from the District Land and Housing Tribunal for Mara at Tarime  
in Land Appeal No. 40 of 2021 Originating from Susuni Ward Tribunal  
(Rorya) in Land Dispute No. 28 of 2020)*

**NYANGI MARWA NYANGI ..... APPELLANT**

***Versus***

**MWITA PETRO ..... RESPONDENT**

**JUDGMENT**

05.07.2022 & 28.07.2022

Mtulya, J.:

Mr. Nyangi Marwa Nyangi (the appellant) was aggrieved by the judgment of the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) in **Land Appeal No. 40 of 2021** (the appeal) originating from **Susuni Ward Tribunal (Rorya)** (the ward tribunal) in **Land Dispute No. 28 of 2020** (the dispute). In this court the appellant filed one (1) reason of appeal as displayed in his petition of appeal, in brief, that: *the ward tribunal sat and determined the dispute while it was improperly constituted hence its decision is null and void.*

The parties were summoned to appear in this court on 5<sup>th</sup> day of July 2022 to explain what transpired in the ward tribunal during the hearing and determination of the dispute, and did not decline

the call and appeared themselves without any legal representation. When the appellant was asked to explain his reason of appeal, as a lay person, registered several materials and complained that: first, the ward tribunal members sat in breach of the law regulating ward tribunal in hearing land disputes; second, it was Wegesa Msilali, the relative of Mr. Mwita Petro (respondent) who had caused chaos in the ward tribunal during the hearing of the dispute; and finally prayed this court to peruse the record and see constitution of the ward tribunal's members during the hearing and determination of the dispute.

The appellant's submission was protested by the respondent contending that the ward tribunal in the disputed abided with all the laws regulating land disputes. In replying on members of the tribunal, the respondent argued that the confusion displayed on the record was caused by two members of the ward tribunal who sat in the dispute, namely: Consolata Ikanda, who is a mother in law (*Mama Mkwe*) of the appellant and Jackson Nyangi, who is relative of the appellant.

As the parties were lay persons, they had no details as to what exactly happened in the ward tribunal during the hearing and determination of the dispute in one hand and citation of the violated laws on the other. This court, in order to do justice to the

parties, had glanced the record and found one (1) irregularity complained by the appellant, namely: confusion in sitting and changing of the member of the tribunal. In order to appreciate the complaint of the appellant and proceedings of the dispute, I will explain, albeit, in brief:

On 16<sup>th</sup> November 2020, the appellant approached the tribunal and complained on trespass caused by the respondent on long established boundaries of his land. On 24<sup>th</sup> November 2020, the dispute was called for mention and was set for mediation on 8<sup>th</sup> December 2020. On that day, 8<sup>th</sup> December 2020, the tribunal sat for mediation and had constituted with four (4) members, namely: Jackson Nyangi, Chacha Wambeho, Consolata Ikanda, and Pili Samwel. During the hearing of the matter and opinion recording on 23<sup>rd</sup> February 2021, five (5) members participated namely: Magdalena Itembe, Consolata Ikanda, Wegesha Msilali, Pili Samwel and Getare Wambura. Consolata Ikanda and Pili Samwel had already took part in mediation stage, but also appeared during the hearing of the dispute.

The record shows further that when the members decided to *visit locus in quo*, four (4) members participated and two (2) did not participate during the hearing. The members were Wegesi Msilali, Getare Wambura, Jackson Nyangi and Chacha Wameho.

However, Jackson Nyangi and Chacha Wameho were not reflected during the hearing of the dispute. Finally, when the members convened for decision making on 9<sup>th</sup> March 2021, a total of seven (7) members were summoned and decided the matter. The members were: Getare Wambura, Jackson Nyangi, Chacha Wameho, Wegesha Msilali, Consolata Ikanda, Magdalena Itembe, and Pili Samwel. It is unfortunate that the whole record is silent on the gender of each specific member participated in specific proceedings in the dispute.

The law enacted in sections 4 of the **Ward Tribunals Act** [Cap. 206 R.E. 2002] (the Ward Tribunals Act) and section 11 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act) require ward tribunals, during hearing and determining land disputes to: *consist not less than four nor more than eight members of whom three should be women*. Following the enactments, the Court of Appeal (the Court) and this court had rendered down a bunch of precedents explaining the applicability of the sections.

The Court in the precedent of **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, after citation of the named sections 4 & 11 of the Ward Tribunals Act and the Act respectively,

at page 5 of the judgment, explained the application of the sections:

*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).

This explanation was further qualified by the decision of this court in **Anne Kisonge v. Said Mohamed**, Land Appeal No. 59 of 2009 on the requirement of displaying gender status of all members who participate in decision making in ward tribunals. In the precedent of **Anne Kisonge v. Said Mohamed** (supra), this court was disturbed by failure of the ward tribunal to reflect members' participation on each day of trial and their gender status. The mostly celebrated passage from the precedent is reproduced herein for purposes of 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, this court was certain and settled that our customs and traditions of degrading women participation in land disputes decision making or hiding gender status of members in proceedings of ward tribunals has no place to stay (see: **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021).

Following the two (2) cited faults in: first, confusions displayed in the proceedings of the ward tribunal; and second, absence of a display of the gender status of the members during the proceedings in the ward tribunal, and considering the cited precedents, I am moved to quash decisions and set aside proceedings of the district and ward tribunals for want of proper application of laws (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal

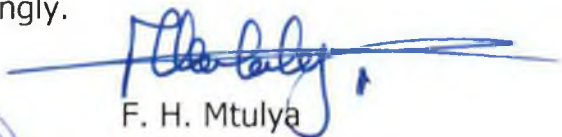
Case No. 111 of 2021; and **Jirabi Ruhumbika Biseko v. Kirigini Saoke**, Civil Appeal Case No. 29 of 2021).

This dispute is supposed to receive a *trial de novo* order from this court. However, following the enactment of 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, this court is not positioned to order the same. I have therefore decided to let it open to any of the parties, if so wish, to lodge a fresh and proper land dispute in an appropriate forum in accordance to the current laws and procedures regulating land disputes.

I am aware the parties have incurred costs in attending the present dispute. However, I have decided to make no any order as to costs. The reason is obvious that the parties are lay persons and the wrongs were caused by the ward tribunal and blessed by the district tribunal. In any case, the dispute may take new course in accordance to new enactments to identify the rightful owner of the contested land

Ordered accordingly.




  
F. H. Mtulya

**Judge**

28.07.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Nyangi Marwa Nyangi and in the presence of the respondent, Mr. Mwita Petro.



F. H. Mtulya

**Judge**

28.07.2022