

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

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**MISC. LAND APPEAL NO. 61 OF 2020**

*(Originating from District Land and Housing Tribunal of Dodoma in Land Appeal No 292  
of 2019, Originated from Land Case No. 13 of 2019 of Mkoka Ward Tribunal)*

**SAMWEL MHEHE..... APPELLANT**

**VERSUS**

**WANDO MBUMI .....RESPONDENT**

**JUDGMENT**

16/05/2022 & 23/05/2022

**KAGOMBA, J**

SAMWEL MHEHE ("appellant") has filed his second appeal in this Court to challenge the decision of the District Land and Housing Tribunal of Dodoma at Dodoma, ("Dodoma DLHT") which was made in favour of WANDO MBUMI ("respondent").

The appeal is based on the following grounds:

- 1) That, the Dodoma DLHT erred in law and facts to pronounce decision without considering the facts that the piece of land in dispute belongs

to the appellant since 1975's given by Village Council and he had built three houses thereon.

- 2) That, the Dodoma DLHT erred in law and facts to pronounce decision without taking into account that the respondent is only an invitee Ex-gratia of the appellant's land.
- 3) That, the Dodoma DLHT erred in law and facts by not considering the weight of the credible evidence adduced by the appellant's witness at the trial instead considered the evidence adduced by respondent's which were weak and contradictory.
- 4) That, the Dodoma DLHT erred in law and facts by pronouncing Judgement without considering the quorum while adjudicating the dispute.
- 5) That, the Dodoma DLHT erred in law and fact by pronouncing Judgment against the appellant without taking into account the fact that, the respondent did not bring any witness before the trial Ward

Tribunal and set aside the strong and relevant evidences adduced by appellant's side.

6) That, the Dodoma DLHT erred in law and facts to enter irrational decision since the respondent failed to produce documentary evidences to prove that the plot of land was so bought.

7) That, the Dodoma DLHT erred in law and facts to enter irrational decision.

Before going further in determination of this appeal, I find it imperative to set the ground by stating brief facts of the dispute. At the Mkoka Ward Tribunal the respondent herein sued the appellant for recovery of piece of land which the appellant herein wanted to encroach into. The respondent herein told the trial Ward Tribunal that he was a neighbour of the appellant. She submitted that the land in dispute was bought by her deceased's husband one Malau Mtalimbo from Mr. Ndulu at Tsh. 20/=. That the late Malau Mtalimbo built a house thereon, where the respondent and her family were staying.

The appellant told the trial Ward Tribunal that the land in dispute is his. That, he was allocated the land by village council in 1975 and built on it in 1976. That in 1984 the respondent and her deceased husband approached him and asked him for temporary accommodation which he granted them. Later the husband and the child called Chitu died on different dates and he allowed the dead to be buried in his land. He later on came to discover that the respondent and her deceased husband were his in-laws. He thus allowed them to stay for more time till 1987 when the respondent's husband died. The respondent demolished the hut were living in and built another house wherein she shifted in 2019.

After a full trial, the trial Ward Tribunal entered judgment in favour of the respondent. The appellant's appeal to the Dodoma DLHT was unsuccessful, hence this appeal.

During hearing, both parties, who had no legal representation, submitted before this Court substantially the same narration as recorded in the background facts above, save for the fact the respondent told the court that the respondent was his son in law and that the disputed land was hers as she inherited the same from her deceased husband. As such, the parties

made cross-prayers to the court. While the appellant prayed the Court to allow the appeal, the respondent prayed the appeal to be dismissed. The major issue for determination is therefore whether the appeal has merit.

As I have stated in the opening sentence of this judgment, this is the second appeal. Both the trial Ward Tribunal and the Dodoma DLHT made a concurrent finding that the land in dispute belongs to the respondent, having inherited the same from her deceased husband. Under such circumstances this Court is guided to exercise extreme restraint in interfering with that concurrent finding of the lower tribunals. I shall have to deal with misdirections or non-direction on the evidence and the law, if any. (see **DPP V. Jaffari Mfaume Kawawa** (1981) TLR 149, a Court of Appeal decision).

I have reviewed the judgment and proceedings of the lower tribunals in light of the fronted grounds of appeal. The fourth ground of appeal is typical on point of law. It questions the decision of the first appellate tribunal being made without considering lack of quorum during trial, where it states that the Dodoma DLHT misdirected itself by giving its judgment without considering the issue of quorum of the trial Ward Tribunal raised by the appellant. The proceedings of the Dodoma DLHT confirms that the issue was

raised before it but was not considered. That being the case, determination of whether the trial tribunal was properly constituted in compliance with the law becomes of paramount importance.

My perusal of the trial Ward Tribunal proceedings and judgement has revealed that the dispute was filed by the respondent on 22/09/2019. On hearing, the Tribunal was composed of two people; namely George Majinjila – Secretary of the Tribunal and Wando Mbumi – the respondent herein. The records show that the matter was adjourned to 25/09/2019 when the plaint (*Hati ya Madai*) was read to the appellant and evidence taken. The witness for the respondent were marked absent.

On 01/10/2019 defence witnesses were heard. No quorum was recorded. The hearing was adjourned to 8/10/2019 where quorum was three, namely; Prisca Samamba – Chairperson, Obed Njanji- Member and Michael Mhando - Member. Also, the parties were around. This again is the date the evidence of the parties and few witnesses were heard. The Judgment was delivered on 5/10/2019. In the last page of the judgment of the trial Tribunal, the quorum is shown to be of four people, namely, Prisca Samamba (chairperson), Michael Mhando (member), Mariam Malinji

(member) and Godfrey Manyanga (member). It is only of the date of judgment when the quorum of four members.

The quorum of **one** and **three** members recorded during hearing, defies the mandatory provisions of section 11 of the Land Disputes Courts Act, [Cap 216 R.E 2019] which, generally, requires the tribunal to be constituted by not less than four members and not more than eight members, three of them being women. This provision states:

*" 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 above provision is reflected in section 4(1)(a) the Ward Tribunals Act, [Cap 206 R.E 2019]. Section 4(3) of the said Act specifically provides for the required quorum of the Tribunal during determination of disputes. The two sub-sections of section 4 of the Act are reproduced as follows:

*'(1) Every Tribunal **shall consist of** –*

(a) ***Not less than nor more than eight other members**  
elected by the Ward Committee from amongst a list of names  
of persons resident in ward complied in the prescribed  
manner.*

(b) .....

(2) .....

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

(4) *[omitted]'*

[Emphasis added].

Since a Ward Tribunal is not supposed to be composed of less than four members, the proceedings of the Tribunal on 22/9/2019 attended by the Secretary alone and on 25/9/2019 where no quorum is recorded and on 08/10/2019 where only three people formed quorum did not meet the mandatory quorum requirement provided for the cited under sub-section (3) of section 4 of the Ward Tribunals Act [Cap 216 R.E 2019].

Since this ground of appeal was not determined by the Dodoma DLHT, it becomes apparent that there was a serious misdirection on part of the first appellate Tribunal for leaving it unattended. Lack of appropriate quorum in determination of land matters by the trial ward Tribunal vitiates its proceedings and renders the decision reached thereby a nullity. In **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora (unreported), in a similar matter concerning improper quorum for ward tribunal, held on page 6 of its typed judgment as follows:

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

In the above cited decision, the Court of Appeal went further to refer to an akin situation in the case of **Adelina Koku Anifa and Joanitha Sikudhani Anifa v. Byarugaba** Alex, Civil Appeal No. 46 of 2019 (unreported) where it was observed:

*"Since only three members participated in the trial of the matter subject of this appeal at the level of the Ward Tribunal" the proceedings were marred with irregularity, thus null and void hence, because of that ailment which we consider to be grave, we are constrained to, and we hereby quash those proceedings, as well as those in the DLHT and the High Court, and set aside the judgments in both tribunals and the High Court. We direct for the suit to be tried anew by the tribunal."*

[emphasis added]

For the reason deliberated above, I find merit in the fourth ground of appeal. As this ground of appeal is about a serious irregularity that should vitiate the proceedings of the trial Tribunal, I find the same sufficient to dispose this appeal. I shall therefore not labour on determining the remaining grounds of appeal.

Accordingly, the appeal is allowed. I quash the proceedings of both the trial Ward Tribunal and the Dodoma DLHT and set aside the resulting

judgments. Since the issue of whether the suit land belongs to the appellant or the respondent remains undetermined and since the parties have told this court that they are related, I order for retrial of the case by the Ward Tribunal in full observance of the law, and with particular emphasis on mediation. As the parties are related, I make no order as to costs.

Ordered accordingly.

**Dated at Dodoma this 23<sup>rd</sup> day of May, 2022**



  
**ABDI S. KAGOMBA**  
**JUDGE**