

IN THE HIGH COURT OF TANZANIA

SHINYANGA REGISTRY

AT SHINYANGA

LAND APPEAL NO. 51 OF 2021

MUSA GUBABU MABINA.....APPELLANT

VERSUS

KULWA SIMON.....1st RESPONDENT

DEBORA SIMON.....2ND RESPONDENT

**[Appeal from the decision of the District Land and Housing Tribunal of
Maswa.]**

(Hon. J.T. Kaare, Chairman.)

**dated the 30th day of August, 2021
in**

Misc. Land Application No. 66 of 2021

JUDGMENT

9th May & 12th July, 2022.

S.M. KULITA, J.

This is an appeal from the District and Land Housing Tribunal for Maswa. The story behind this appeal in a nut shell is that, parties herein had a land dispute No. 04 of 2019 at the Ward Tribunal of Nyaluhande. Aggrieved with its decision, the Respondent wanted to appeal on it. As he was out of time, he decided to institute a Misc. Land Application No. 66

of 2021 at the District and Land Housing Tribunal for Maswa to seek for extension of time to appeal. In that application, the Respondent was successfully granted the extension of time to appeal.

That decision aggrieved the Appellant, hence appealed to this Court with two grounds of appeal, which are; **one**, the trial Chairman erred to grant leave to appeal while the Respondent did not account for each day of delay, **two**, the trial Chairman erred in granting leave to appeal without considering section 45 of the Land Disputes Courts Act [Cap 216 RE 2019].

On 9th May, 2022 the matter was scheduled for hearing. The Appellant had the service of Mr. Emmanuel Sululu, Advocate, whereas Mr. Emmanuel Butamo, Advocate appeared for the Respondent.

Submitting in support of the appeal Mr. Sululu stated that, the trial tribunal failed to appreciate that, the Respondent did not account for 15 months while seeking for extension of time. To him, having observed this, the trial tribunal ought to have denied the Respondent's application.

Mr. Sululu argued further that, he understands that point of illegality suffices for extension of time, but he argued further that, the same is not automatic. For this, he added that, the same point of illegality must be of sufficient importance and must be apparent on the face of the records. At

this juncture, Mr. Sululu formed an opinion that, the point of illegality as raised by the Respondent lacks the said two qualities.

As for the second ground of appeal Mr. Sululu stated that, section 45 of the Land Disputes Courts Act was not considered. With it he said, substantial justice should be regarded. On that account he was of the views that, the decision of the Ward Tribunal should not be nullified only because of an error that occurred during trial unless it occasions into injustice.

In reply Mr. Butamo submitted that, the trial tribunal granted extension of time to appeal on account of illegality. On this, he was of the views that, the issue of accounting for days of delay is thus inapplicable.

Mr. Butamo went further arguing that, the Ward Tribunal is a Court as it is for the other tribunals. He added that, its composition should be not less than four and not more than eight members, out of which three must be women. He said that, this is as per section 3(2)(b) and 11 respectively of the Land Disputes Courts Act Cap 216 RE 2019.

To insist the same, Mr. Butamo stated that on 7th December 2019, 20th December, 2019 and 30th December, 2019 which was the hearing date, the tribunal sat with no members. He went ahead stating that, even

on 7th January, 2020 which was the date for visiting *locus in quo*, there were no members at all. He termed it as fatal. He added that, even in the judgment of the Ward Tribunal, out of 5 members' names appearing in it, only 4 of them signed. The Counsel further alleged that the said names, do not depict their gender so that to ascertain whether the law has been adhered or not.

As for the second ground of appeal Mr. Butamo stated that, the same has been brought prematurely. The reason behind being that the trial tribunal has not reversed the decision of the Ward Tribunal but has extended time to appeal only.

In rejoinder Mr. Sululu stated that, as the Respondent raised point of illegality, the trial chairman was required to go through proceedings and judgment of the Ward Tribunal and decide whether the raised illegality is of sufficient importance and is apparent on the face of record before granting extension of time on that account. As for the second ground of appeal, Mr. Sululu reiterated his submission in chief. This is the end of both parties' submissions.

I have earnestly gone through both parties' submission, as well as the available records as well. The issue is whether the Appellant's appeal

is meritorious. To answer this, I am going to determine all grounds of appeal together as one.

Concerning ground number one of appeal, I have gone through the typed trial tribunal's decision, specifically in the first paragraph at page number 4. The same shows that, the trial tribunal has granted the Respondent's application for extension of time, on the bases of illegality.

*".....Mimi ninaamini kiwango cha kuonesha
kwamba kuna hoja ya kisheria ambayo baraza hili
linahitaji kushughulikia, waleta maombi, kupitia wakili
wao Mr. Butamo, wamefanikiwa kunishawishi."*

On that account, as long as the Respondent's application was granted on the bases of illegality, then it follows thus, the issue of accounting of each day of delay for the Respondent to have been granted his application, is inapplicable. See, the case of **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia [1992] TLR 182** in which it was stated as hereunder;

*"In our view when the point at issue is one alleging
illegality of the decision being challenged, the
Court has a duty, even if it means extending the*

time for the purpose to ascertain the point and if the alleged illegality be established, to take appropriate measures to put the matter and the record right".

The position was reiterated in **VIP Engineering and Marketing Limited and Three Others v. Citibank Tanzania Limited, consolidated Civil Reference No. 6, 7 and 8 of 2006, CAT (unreported)** in which it was stated thus;

"We have already accepted it as established law in this country that where the point of law at issue is the illegality or otherwise of the decision being challenged that by itself constitutes "sufficient reasons" within the meaning of rule 8 of the Rules for extending time"

However, I agree with Mr. Sululu that, for the illegality to stand as point for extension of time, the same must be **firstly**, of sufficient importance and **secondly**, must be on the face of the records. See, the case of **Lyamuya Construction Company Ltd vs. Board of Registered Trustees of Young Women's Christian Association of Tanzania**, in which it was observed as follows;

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in VALAMBIA'S case, the court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted extension of time if he applies for one. The Court there emphasized that **such point of law must be that of sufficient importance** and, I would add **that it must also be apparent on the face of the record,** such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process."*

(Emphasis supplied).

On that account, it follows therefore that, as rightly submitted by Mr. Sululu that, the trial tribunal had to evaluate the raised point of illegality on account of its importance and whether it is apparent on the face of records.

As the trial court omitted to do so, this court now has to step into its shoes and evaluate the same. This is as per the case of **CHRISTINA d/o DAMIANO APPELLANT v. THE REPUBLIC, Criminal Appeal**

NO. 178 of 2012, CAT at TABORA (unreported) in which the court held:

"We have carefully gone through the record of proceedings and judgment of the trial Court. This being the first appeal, this Court is entitled to re-evaluate the evidence and come to its own conclusions."

The records show at paragraph 6 of the Respondent's affidavit at the trial court that the Respondent averred that, there is illegality on the decision they seek to challenge through appeal. As it was submitted by the Counsel for the Respondent, Mr. Butamo, the records further show that, during hearing of the application for extension of time at the Ward Tribunal, there were no corams showing that it sat with its members. To him this is illegality.

On his part, Mr. Sululu for the Appellant did not object on the aforementioned illegality, but he raised a concern that, the Respondent had to account for days of delay instead of showing the illegality at that particular time. This is the position that Mr. Sululu maintains in this appeal. He does not dispute the fact that, the proceedings of the Ward Tribunal show that it sat without its members, but he just stresses that the point of illegality is not of sufficient importance and that it caused no injustice.

Section 11 of the Land Disputes Courts Act [Cap 216 RE 2019] provides;

"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."

Thus, for the Ward Tribunal to be lawfully constituted, it must adhere to the above provision of the law. Equally, failure to adhere the above cited provision of the law renders the proceedings and its resultant decision a nullity. See, **Mariamus Barnabas Mrope v. Victoria Amandus, Misc. Land Appeal No. 9 of 2016 HC Mtwara** (unreported)

The question is whether this point of illegality which is apparent on the face of the records, is of sufficient importance and non-adhering of it renders injustice. The answer, is "yes", the proceedings of the Ward Tribunal apparently show that, the tribunal convened without the required number of its members. Their names are not shown in corams.

On the last two issues, the answer to them is also "yes". The raised point of illegality is of sufficient importance and leads to injustice, if not

considered. The reason being that, the members are not there only for the sake of being present, but they have a duty to do. They engage themselves in decision making on the land disputes. It is the law that requires their attendance.

In other words, one may ask, if at all few people, with their common interests, lock in themselves, alone, to decide the land dispute according to their interest, in the name of the Ward Tribunal, will it not occasion injustice? Who then would challenge their common interests while they have selected themselves a few?

To me, I am firm settled that, failure to properly constitute the Ward Tribunal may occasion into injustice. And, this kind of illegality is of vital importance for the appellate court to have a chance to address.

On that account, I am settled that the Appellant's appeal lacks merits and I proceed to dismiss the same with costs.


S.M. KULITA
JUDGE
12/07/2022

DATED at **Shinyanga** this 12th day of July, 2022.



A handwritten signature in blue ink, appearing to be "HL", is written above the printed name.

S.M. KULITA
JUDGE
12/07/2022