

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. 31 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 103 of 2021 Originating from Nyamang'uta Ward
Tribunal (Bunda) in Land Dispute No. 1 of 2021)*

TABU MAKONGORO APPELLANT

Versus

ROBERT KUSEKWA RESPONDENT

JUDGMENT

11.08.2022 & 11.08.2022

Mtulya, J.:

The Court of Appeal of the United Republic of Tanzania (the Court) on the 5th November 2021, had interpreted the provisions in section 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), which 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.*

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 Act

respectively, at page 5 of the judgment, interpreted the provisions in the cited provisions:

*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 statement is cherished by the Court itself and a bunch of decisions of this court (see: **Adelina Koku Anifa & Joanitha Sikudhani Anifa v Byarugaba Alex**, Civil Appeal No. 46 of 2019; **Nyangi Marwa Nyangi v. Mwita Petro**, Misc. Land Appeal Case No. 4 of 2022; and **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021. Following the directives of the Court, this court in the decision of **Musa Onani v. Nose Maige**, Land Appeal Case No. 20 of 2010, at page 2 of the judgment, added another requirement of the provisions which is not part of the enactments in section 4 of the Ward Tribunals Act and section 11 of the Act on a display of coram on each day of the proceedings in the ward tribunals.

In the present appeal, record shows that **Nyamang'uta Ward Tribunal** [Bunda District] (the ward tribunal) in **Land**

Dispute No. 1 of 2021 (the dispute) heard the dispute from 20th January 2021 to 2nd June 2021 without a display of the coram in the proceedings. It was during judgment drafting and pronouncing on 2nd day of June 2021, when the four (4) members of the ward tribunal were reflected on the record, namely: Donald Matimo (ME), Wakura Mageta (KE), Buyaga Msoke (ME), and Ally Mkuzu (ME). The errors, on non-consideration of gender and display of coram on every day of the sitting of the ward tribunal, according to this court, in the decision of **Musa Onani v. Nose Maige** (supra), are not curable and the remedy is to order retrial of disputes after quashing decisions and setting aside of proceedings in disputes. However, according to the Court, the proceedings must be set aside and decision quashed in favour of the fresh and proper suit in accordance to the current laws and procedures regulating land matters.

During the hearing of the present appeal, the appellant had hired the legal services of Mr. Cosmas Tuthuru, learned counsel, who, being aware of the cited precedents and practice of this court and the Court, had decided to abandon all grounds of appeal in favour of two reasons of appeal, namely: complain on

a number of women members and absence of the display of coram on each day of the dispute's hearing. The move had received support of the respondent, who appeared in person, without any legal representation, but seemed to grasp the gist of the matter in question. However, he claimed that the wrong was committed by the ward tribunal and supported by the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 103 of 2021** (the appeal)

On my part, I think, in my considered opinion, when an enactment has received the Court's decision, this court cannot register any interpolations or escape the directives, even if there are good reasons to do so. In the present appeal, no coram is shown on the record and even the number of women members is in breach of section 4 of the Ward Tribunals Act and section 11 of the Act. This court will have no options rather than setting aside proceedings and nullification of the two lower tribunals' decisions.

Having said so, I am moved to set aside the proceedings and quash decisions of the district tribunal in the appeal and ward tribunal in the dispute 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, and the directives of the Court in the precedents of **Edward Kubingwa v. Matrida A. Pima** (supra) and this court in **Nyangi Marwa Nyangi v. Mwita Petro** (supra), this court cannot 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 were lay persons who appeared in the ward tribunal in search of justice, but the ward tribunal committed two (2) wrongs on the women

members' seats and display of members on each day of the proceedings. It is unfortunate that the district tribunal appreciated the wrongs. 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.



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F. H. Mtulya

Judge

11.08.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant's learned counsel, Mr. Cosmas Tuthuru and in the presence of the respondent, Mr. Robert Kusekwa.

A handwritten signature in blue ink, appearing to be "F. H. Mtulya", written over a horizontal line.

F. H. Mtulya

Judge

11.08.2022