

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB – REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO. 54 OF 2021

(From the Decision of the District Land and Housing Tribunal of Musoma District at Mara in Land Appeal No. 300 of 2019 and Original Ward Tribunal of Sirorisimba Ward in Application No. 15 of 2019)

MGESI WAMBURA APPELLANT

VERSUS

NDEGE CHACHA RESPONDENT

JUDGMENT

25th July 2022

F. H. Mahimbali, J.

The appellant and the respondent are in quarrel for a claim of the suit land at the trial tribunal. Each one claims the suit land to be his. Not satisfied, the respondent successfully preferred an appeal before the DLHT. The appellant has been aggrieved thus the genesis of this appeal.

During the hearing of the case, the appellant was dully represented by Mr. Daud Mahemba learned advocate. The respondent defaulted appearance before the Court which default prompted Mr. Mahemba to pray for exparte hearing which prayer was granted by the Court as per proof of

service of the said respondent and that the appeal to proceed ex parte pursuant to order XXXIX, Rule 17 of the CPC, Cap 33 R.E 2019.

Before Mr. Mahemba had argued his grounds of appeal, this Court had observed that the trial tribunal's proceedings might be put at question and thus I ordered the learned counsel to address me on the propriety of the trial tribunal's proceedings. In his submission, Mr. Mahemba submitted that it is true that as per proceedings dated 25/5/2019, there were four tribunal members, but on 9/5/2019 there were six members. As per proceedings of 10/6/2019 there is no coram mentioned when the appellant was testifying. Likewise is to the reception of evidence of SM2 and SM3.

He added that on 18/7/2019, when the respondent together with his witnesses were testifying, there is no any coram being mentioned. On 15/8/2019 there was hearing, but again no coram is mentioned. In the circumstance, he submitted that it is hard to know if there was proper coram and also if those who heard the appeal are those who decided. It is so doubtful as per law. The trial tribunal's membership is a fundamental legal requirement to determine whether those who heard had legal mandate to do so. Under section 4 the Ward Tribunal Act, he clarified that composition of the ward tribunal as per law, its valid membership should

not exceed 8 people but not below 4. The same is provided under S. 11 of the LDCA, Cap 216.

In the circumstances of this case, it is clear that there was no legal compliance. These deficiencies have not been addressed by the first Appellate Tribunal - District Land and Housing Tribunal (DLHT).

As if this is not enough, he further pointed out that the trial tribunal record is silent whether there was mediation done in compliance to section 17 of the LDCA. Further, the pecuniary Jurisdiction of the dispute is not stated in the said judgment. It is thus not clear whether the trial tribunal was clothed with jurisdiction to do what it did.

In totality, basing on these legal issues, the appellant's counsel while abandoning his grounds of appeal, he prayed that under S. 43 (1) a & b of the LDCA to quash the lower tribunal's Proceedings and in its place order that a party interested with the matter to file a proper suit as per current law.

I have digested the arguments by Mr. Mahemba, that the trial tribunal's proceedings were vitiated with numerous fundamental legal deficiencies on membership coram changing from one session to another whenever hearing was being done. I concur with Mr. Mahemba that it is

true as per proceedings dated 25/5/2019, there were four tribunal members, but on 9/5/2019 there were six members. As per proceedings of 10/6/2019 there is no coram mentioned when the appellant was testifying. Likewise is to the reception of evidence of SM2 and SM3. That on 18/7/2019, when the respondent and his witnesses gave their testimonies, there is no any coram mentioned. On 15/8/2019 there was hearing, but no coram is mentioned.

Constitution of the Ward Tribunal in any dispute resolution is a fundamental duty which presupposes strict compliance as per law. It is thus a jurisdictional issue. Since ward tribunals are creatures of the law, their composition and coram is strictly as legally provided. Under section 4 of the Ward Tribunal Act the composition of the ward should not exceed 8 members but not below 4 members. The same is provided under S. 11 of the LDCA, Cap 216 which provides each tribunal shall consist of not less than **four** nor more than **eight** members of whom **three shall be women**. So, membership of each tribunal in settling any dispute should be of minimum 4 members and maximum of eight members, of whom three shall be women. So the coram in each tribunal sitting can either be 4 members, 5 members, 6 members, 7 members and maximum of eight members. However, once selected then it is only those members of a

particular tribunal who shall maintain coram (panelists) and not others. That means, the members should not keep changing in numbers from one session to another, otherwise we might experience cases being decided by members who did not hear the case. Any decision premised on the Ward Tribunal that is not properly constituted is a nullity.

Now under S. 43 (1) a & b of the LDCA on these irregularities, I hereby quash the lower tribunals' Proceedings and set aside its orders thereof as originating from irregular proceedings. In its place, I order that a party still interested with the matter to file a proper suit as per current law.

DATED at MUSOMA this 25th day of July, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 25th day of July, 2022 in the presence of the Mr. Mahemba advocate for the appellant, Mr. Gidion Mugo, RMA and respondent being absent.

F. H. Mahimbali

Judge

25/07/2022