

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA

MISCELLANEOUS LAND APPEAL NO. 28 OF 2021

*(Originating from District Land and Housing Tribunal for Rungwe at
Tukuyu Land Appeal No. 25 of 2020, Original Kandete Ward Tribunal
Land Case No. 5 of 2020)*

TUMWITIKEGE KAJWANGA APPELLANT

VERSUS

ZAINA IHOLA RESPONDENT

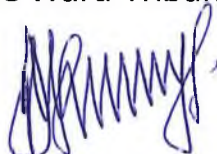
JUDGMENT

Date of last order: 30/06/2022

Date of judgment: 26/07/2022

NGUNYALE, J.

The appellant Tumwitikage Kajinanga sued the respondent Zaina Ihola before the Kandete Ward Tribunal over ownership of the suit land. The Ward Tribunal heard the parties and at the end it was satisfied that the respondent was the lawful owner of the suit land because there was no evidence to prove the allegations raised by the appellant that she was given the said land by the mother of the respondent. The appellant was aggrieved with the decision of the Ward Tribunal, she preferred an appeal



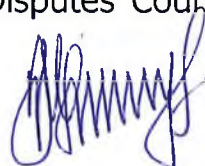
before the District Land and Housing Tribunal for Mbeya at Mbeya. The first appellate Tribunal confirmed the decision of the trial Tribunal.

Protesting for her right the appellant on 9th July 2021 appeared before this Court armed with a petition of appeal challenging the decision of the District Land and Housing Tribunal advancing three grounds of appeal; -

One, that the trial District Land and Housing Tribunal grossly erred in law and facts by its failure to take cognizant the fact that the Trial Ward Tribunal entertained the case without showing in the proceedings, the quorum in all sittings of the members who were hearing the case.

Two, that the trial District Land and Housing Tribunal grossly erred in law and facts by ignoring the appellants' evidence that she had] used the disputed land for 50 years undisturbed and instead it believed and considered the respondent's mere words, as she also did not front any independent witness during the trial to support her case.

The appeal was called for hearing, the appellant submitted in support of the first ground of appeal that the first appellate Tribunal erred when it failed to take cognizant of the fact that the Trial Ward Tribunal entertained the case without showing in the proceedings the quorum in all sittings of the members who were hearing the case. He was of the view that the irregularity is fatal and occasioned injustice to all parties. The anomaly is contrary to section 11 of the Land Disputes Courts Act [Cap 216 R. E



2019]. The omission is violative of the law as cited above and therefore renders the proceedings and judgment a nullity. The anomaly ought to have been taken care by the first appellate Tribunal under powers conferred to it by section 34, 35 and 36 of the Land Disputes Courts Act, [Cap. 216 R. E 2019] by quashing the proceedings and judgment of the Ward Tribunal.

The appellant cited the case of **Tumbombelege nakandonga Vs. Bishop Mwandambo**, in Misc. Land Revision No. 1 of 2007 where this Court sitting at Sumbawanga stated; -

"This record does not show the list of members of the Tribunal and in fact present at the hearing of eth complaint and response thereto, so that they will be those who are shown at the end to sign the judgment are those who participated and who form the majority decision of the tribunal..."

On the first ground of appeal the respondent conceded to the submission of the appellant that the Ward Tribunal proceedings do not show the names of the members who did sit on the matter, it is only showing that sometimes members of the Tribunal were allowed to ask questions to witnesses and at the end in the judgment list of members is shown. She agreed and appreciated the provision of the law cited by the appellant as the correct position of the law. She was of the same view that composition of the Ward Tribunal is a legal issue that touches jurisdiction, failure to



show names of the members who heard the matter from the first date of hearing to the last vitiate the proceedings.

Having heard the rival submission, it is not in dispute per submission of both parties that the proceedings before the Ward Tribunal were tainted with fatal irregularities which may render the proceedings and judgment of both lower Tribunals a nullity.

In the first ground of appeal, which was argued by the parties, the issue is whether there was proper composition of members in the ward tribunal. The law is certain under Section 11 of The Land Disputes Court Acts, cap 216 R.E 2019 as to what constitutes the Ward Tribunal. That names and genders of the members participating in cases before the ward tribunal must clearly be reflected in each sitting of the ward Tribunal. The ward Tribunal is properly constituted if composed of not more than eight or less than four members as provided under section 11 and 14 of the Land Disputes Courts Act [Cap 216 R: E 2019]. Section 11 of the Land Disputes Courts Act [Cap 216 R. E 2019] reads as follows;

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.

Further section 14(1) of the Act provides that;

The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.

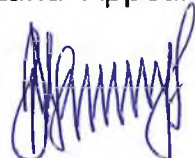


Thus, after a thorough perusal of the entire proceedings of the ward Tribunal, names of members appeared only on the date of judgment. Therefore, members who attended during hearing are not known. Despite the fact that there were questions asked by the members of the ward tribunal, but the names of the members who contained the ward Tribunal during hearing were not mentioned. On the date of judgment on 23rd June 2020 when the judgement was delivered five members attended.

The issue that the coram was not reflected in the proceedings as already stated and admitted by both parties will be settled in due course. This means that the trial Tribunal could not form the proper coram as per Section 11 of cap 216 R.E 2019.

Since the proceedings do not show members who were present at the hearing of the matter, I think justice was not done. Because the composition of members who attended hearing of the case is not reflected in the records of the Tribunal it is without doubt that the omission was fatal as conceded by the parties in their respective submissions.

It is now settled that in each day when the matter is heard in the ward tribunal, Coram of members who participate must be indicated in the proceedings. See the case of **Alexander Mashauri v. Regina William**, Misc. Land Appeal No. 64 of 2020 HC at Musoma and **Mwita S/O Wiranga v. Pillysincha**, Misc. Land Appeal No. 70 of 2020, HC at



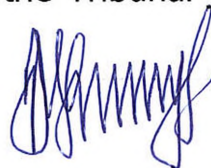
Musoma (both Unreported). In **Alexander Mashauri** (supra) this court held that;

'The issue whether or not the Ward Tribunal was properly constituted is addressed by looking at the proceedings of the respective tribunal. It is expected of the proceedings to indicate the name of the members present at every sitting of the Ward Tribunal. It is not enough to show or append the said names to judgment. It is my considered view that, judgment cannot be used to determine members of the Ward Tribunal who participated in hearing the application. This is especially when it is taken into account the date of hearing and date of judgment may not be the same.'

Composition of the ward tribunal is not a procedural aspect, rather a legal issue which touches jurisdiction and its authority when making decision. The jurisdiction of ward tribunal is only available, when it is duly constituted. Failure to show names of members who heard the matter from the first date to the last, vitiated the proceedings. As it is very difficult to know if the members who were listed in the judgment, participated fully in the hearing. The same was held in the case of **William Stephen Vs. Leah Julius(administratrix) of the late Neeva Sabuni**, Civil Appeal No.65 of 2013 CAT; it was stated that

'omission to disclose the names of the persons constituting the Ward tribunal during trial is a fatal irregularity'.

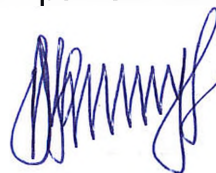
Since the proceedings of the ward Tribunal do not show attendance of the members, in my view it creates injustices to the parties at the time of hearing and finally composition of the Tribunal judgement. Therefore, I



concede with what was submitted by the appellant and supported by the respondent that there was a serious noncompliance of the law by the ward Tribunal. The effect of such noncompliance renders the whole proceedings and judgment a nullity.

In the end result, the trial Tribunal was not well constituted, therefore, the decision reached by the ward Tribunal while not properly constituted was a nullity. Judgment and proceedings of both Tribunals are hereby quashed and orders set aside. upon finding that proceedings and judgment were a nullity the court is still called to grand a proper relief to the parties according to the circumstance of the case guided by law and practice. Since the first ground of appeal disposes of the appeal, is find no reason to consider the second ground of appeal.

Having quashed and set aside the above stated proceedings and judgments, ordinarily I would have directed the suit to be heard *de novo*. However, in the advent of the recent amendments made to the Land Disputes Courts Act Cap. 216 by the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021, whereby the powers of the Ward Tribunals to adjudicate land disputes have been immensely stripped off. I find it not practicable to order retrial. In the circumstances I therefore direct that anyone who wishes to pursue the claim to file afresh in



accordance with the current legal regime. I make no order as to costs as the mistake was done by the trial tribunal. Appeal allowed.

Dated at Mbeya this 26th day of July 2022.




D. P. Ngunyale
Judge
26/07/2022