

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

LAND APPEAL NO. 26 OF 2021

(Originating from Judgment and decree of the District Land and Housing Tribunal of Mbeya at Mbeya in Land Appeal No. 195 of 2021 in original Land Dispute No. 2 of 2020 of the Mpemba Ward Tribunal of Momba District)

Between

MANDE MTAMBO.....APPELLANT

VERSUS

MIALES MZUNDA..... RESPONDENT

R U L I N G

Date: 30 March & 26th May, 2022

KARAYEMAHA, J

The appellant is aggrieved by the whole judgment of the District and Land Housing Tribunal in Land Appeal No. 195 of 2021. He has preferred five grounds of appeal.

Briefly, the appellant was successfully sued by the respondent for a claim of 2.5 acres of land in the ward tribunal of Mpemba within Momba District in Songwe Region. Aggrieved the appellant's appeal to the District Land and Housing Tribunal for Mbeya vide Land Appeal No.

195 of 2021 was dismissed for want of merits. Still aggrieved he filed the present appeal.

When the appeal was called on for hearing parties appeared in person (unrepresented). By consensus disposal of the appeal took the form of written submission. Both parties complied with the schedule order of the court.

The appellant in his submission had nothing useful to submit apart from reproducing grounds of appeal of which the first did not feature in the memorandum of appeal. He contended that since 1990 he has been in occupation of the suit land, if deprived will suffer great loss as he has used it for cultivation without interruption from any person until 2021. On that basis prayed the appeal to be allowed.

Responding to the above submission the respondent challenged written submission by the appellant for being unknown document therefore, prayed the same to be expunged from the records. Responding to grounds of appeal he argued that names of assessors are reflected in the proceedings and were given an opportunity to prepare their opinion which is also reflected in the judgment.

On 2nd and 3rd grounds he submitted that both parties were given chance to adduce evidence and call witnesses. He argued that his evidence was heavier compared to that of the appellant hence the trial and appellate Tribunal evaluated and analysed it properly in his favour. He illustrated his position by citing the case of **Hemdi Said vs. Mohamed Mbilu** [1984] TLR 113.

Regarding 4th ground the respondent submitted that the petition of appeal and the judgment shows that the respondent was the appellant in the appellate tribunal and that the appellant is intending to mislead the court on this point.

On 5th ground it was submitted that the ward tribunal visited the *locus in quo* where it ascertained the suit land and its boundaries. He impressed this court not to interfere with findings of the trial court on this issue.

I have considered the records and rival submission of both parties. Upon examination of grounds of appeal, the matter can be fairly disposed based on the first ground only that;

That the tribunal erred in law and fact that the names of elders of law are missing.

Although it is not clear what the appellant meant but, I understood him to mean names of the assessors/members are missing. The appellant in his submission did not submit on it while the respondent submitted that assessors were present throughout the proceedings. I have perused records of the appellate tribunal and noted that the appellant in his petition of appeal to the District Land and Housing Tribunal one of the grounds of appeal was that the ward tribunal did not indicate coram of members in each day it sat for hearing. In the judgment the Chairman held that coram was shown in each day as per ward tribunal record. This is reflected at page 2 to 3 of the appellate tribunal judgment.

This issue of showing in the coram names of members is a point of law which touches composition and jurisdiction of the ward tribunal. I have examined the ward tribunal's record and found that the holding of the chairman is not supported by the record. First there are two handwritten proceedings though the content is the same but it has some difference. The first proceedings indicate that the matter was first heard in the ward Tribunal on 28/02/2020 the respondent adduced her evidence on that day. Then the matter was scheduled on 27/03/2020 on this day the appellant cross examined the respondent. Then the matter

was called on 02/04/2020 when the respondent was heard. On 05/05/2020 witness of the respondent was heard and on 21/05/2020 respondent's witnesses testified. There is a note showing list of members who heard the matter from the start to final. This set of proceedings has no judgment.

The other set of proceedings shows that it was recorded after judgment on the first page there in a note showing list and names of members who heard the matter and delivered judgment. The same also shows that the matter was heard on 28/02/2020, 27/03/2020, 02/04/2020 05/05/2020 and 21/05/2020 here there are names and signatures of members who participated in the trial and the judgment.

Having demonstrated as above it behoves me to hold that the Chairman was legally wrong holding that on each day the matter was called on for hearing in the ward tribunal names of members were indicated. Composition of the ward tribunal is neither a factual nor procedural aspect rather a legal issue which touches the central part and spine of the matter and eventually the jurisdiction of the tribunal and its authority when making decision. Section 11 of the Land Disputes Courts Act [Cap 216 R. E 2019] provides that:

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.

Section 14(1) of the Act provides further that:

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

In this appeal it is apparent that members were not mentioned to have been involved throughout the hearing were as required by the law as their names do not appear that i.e., on 28/02/2020, 27/03/2020, 02/04/2020 05/05/2020. Since, the proceedings do not show members who were present at the hearing of the application, this Court is satisfied that the Ward Tribunal was not properly constituted. It is now law settled that in each day the matter is heard in the ward Tribunal coram of members who participates must be indicated. This is not optional but a legal requirement to be complied with at any cost.

In this matter the trial Tribunal did not observe this requirement of law, similarly the appellate tribunal although perused the ward tribunal proceedings but arrived at a conclusion which is not supported by the record.

The other irregularity is presence of two handwritten proceedings of the ward tribunal. It is not clear how one person managed to record two proceedings simultaneously. As hinted earlier one of the proceedings shows that it was reproduced after judgment. Worse enough not all proceedings contain judgment. It is not possible to have two co-existing original handwritten proceedings of the same suit. This fraction also vitiates the proceedings.

The failure and the irregularity by the trial Tribunal to observe the mandatory requirement on the composition of the trial Tribunal and to have two handwritten proceedings did not only vitiate the proceedings and the resulting decision of the trial Tribunal but it also rendered the trial Tribunal to lack jurisdiction to try the case. I therefore, quash, set aside the proceedings and judgment of the trial Tribunal as well as that of the District Land and Housing Tribunal as it originates from nullity.

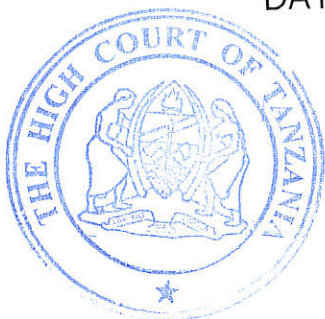
Owing to this issue being on point of law it is sufficient to dispose of the appeal, the remaining grounds of appeal will not be deliberated as will be for academic purpose with no any meaningful to the present appeal.

Having quashed and set aside the above stated proceedings, judgments and orders thereto of the lower Tribunals, I would, naturally,

have directed for the suit to be heard *de novo*. However, with 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, powers of the Ward Tribunals to adjudicate on land disputes have been immensely stripped off. I find it not practicable to order the suit to be head *de novo*. In these circumstances, I direct any of the parties who wishes to pursue the claim to file a fresh land application in accordance with the current procedure and law to do so. Similarly, given the fact that parties are relatives, I decline from ordering costs. I further hesitate because the apparent anomalies were caused by the Tribunals hence no part is to benefit from them. I make no order as to costs due to relationship of parties.

It is so ordered.

DATED at **MBEYA** this **26th** day of **May, 2022**



A handwritten signature in black ink, appearing to be "J. M. Karayemaha", is written over a horizontal line.

J. M. KARAYEMAHA
JUDGE