

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

MISC. LAND APPEAL NO. 127 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Mara at
Musoma in Land Appeal No. 93 of 2020)*

BETWEEN

MALIMA NDEGE APPELLANT

VERSUS

PAULO BRUNO RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

This is a second appeal arising from the decision of the District Land and Housing Tribunal for Mara in Land Appeal No. 93 of 2020.

The respondent herein instituted the land suit (Land Case No. 34 of 2020) against the appellant before the Ward Tribunal of Kyanyari. He claimed that the appellant had trespassed into his piece of land measuring ten (10) acres. The respondent won the suit and was declared the lawful owner of the disputed land.

Aggrieved with the decision of Ward Tribunal, the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Mara at Musoma (the DLHT) in Land Appeal No. 93 of 2020. Still determined, the appellant lodged this second appeal.

The appellant filed a petition of appeal containing several grounds. However, when the matter was called on for hearing, the appellant's counsel abandoned all grounds except one namely,

"That, the 1st appellate Tribunal erred in law and fact for failure to find that the proceedings of the trial Tribunal were null and void as the coram of the Tribunal was not duly constituted"

The appellant was represented by Emmanuel Werema, the learned advocate whilst the respondent fended for himself.

Submitting in support of the appeal, the appellant counsel contented that the DLHT erred in law by failure to notice that the presiding members did not give their opinion contrary to section 4 (4) of the Ward Tribunals Act. He further argued that, the matter was heard by seven (7) members before the Ward Tribunal, however, of all seven members it is only one woman, **Yasinta Marwa** who participated in the hearing. He added that the proceedings were contrary to section 11 of the Land Disputes Courts Act which requires a minimum number of four members of whom three should be women. He cemented his argument with the case of **Edward Kubingwa vs Matrinda A. Pima**, Civil Appeal No. 107 of 2008, CAT at Tabora. The appellant counsel prayed the Court to find that the

proceedings and decision of the Ward Tribunal were a nullity and consequently, quash and set them aside.

In reply, the respondent being a lay person did not have much to submit. He conceded that there was one woman who also was on maternity leave at sometimes.

Having gone through the parties' submissions and record of the appeal, I find one issue worth of disposing this appeal. That is whether the quorum of the Kyanyari Ward Tribunal sitting in Land Case No. 34 of 2020 was properly constituted.

Without going any further, it is true as rightly submitted by the appellant learned counsel that the quorum of the Ward Tribunal was not properly constituted as required by the law. Section 11 of the Land Disputes Courts Act requires the quorum of the Ward Tribunal to consist the minimum of four members of whom three should be women. In the matter at hand, the record of the Ward Tribunal shows that the quorum was consisted of seven members namely;

1. Zacharia Shikwembe
2. Daudi Kitoki
3. Chales Mayebe
4. Kasta Maige

5. Thobias Sagaja
6. Yasinta Marwa and
7. Paulo Abiero.

From the record, it clear that, of all seven members, it is only one member namely, Yasinta Marwa who was a woman.

To cap it all, when I took time to pass through the Tribunal records, I noted that of all seven witnesses who testified before the Trial Ward Tribunal, Yasinta heard only the evidence of one witness to wit Paul Buruno. Thus, it is with no gainsaying, that the proceedings of the Ward Tribunal in Land Case No. 34 of 2020 contravened section 11 of the Land Disputes Courts Act.

It therefore necessarily follows that the trial Tribunal was not properly constituted. Consequently, the proceedings and judgment before Kyanyari Ward Tribunal were a nullity. Similarly, the appellate proceedings and judgment in the DLHT were a nullity as they emanated from the nullity proceedings. See the case of **Edward Kubingwa vs Matrida A. Pima (supra)**.


In the light of above, I nullify the proceedings and set aside the judgements of the two lower Tribunals. Since the Ward Tribunals, in terms of sections 45 and 46 of the Written Laws (Miscellaneous Amendments)

(No. 3) Act No. 5 of 2021, do no longer have jurisdiction to adjudicate land matters, I decline to order a retrial. Instead, I direct that a party who still wishes to pursue the matter, he may institute a case afresh before a Tribunal of competent jurisdiction subject to the current legal requirements. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa
JUDGE
22/08/2022