

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO. 3 OF 2021**

*(Arising from Misc. Land Application No. 05 of 2021 of the Kahama District Land & Housing Tribunal arising from Land Complaint No. 8 of 2020 of Kisesa Ward Tribunal)*

**JOEL KONDELA MADUHU ..... APPELLANT  
VERSUS**

**SIYA NDEJA..... RESPONDENT**

**JUDGMENT**

*Date: 5<sup>th</sup> May & 3<sup>d</sup> June 2022*

**MKWIZU J:**

At Kisesa Ward Tribunal, appellant unsuccessfully sued the respondent via Land Complaint No 8/2020 at Kisesa Ward Tribunal. He initially filed Revision No 161 of 2020 at the District Land and Housing Tribunal which was unfortunately struck out on 19/1/2021. At that time, applicant was out of the required time for appealing purposes, he thus filed an application for extension of time to file appeal against the decision of Kisesa Ward tribunal out of time. His application was registered No 5 of 2021. The said application could not meet the required standard in law. It was on 22/4/2021 dismissed for lacking in merit. The reasons for the dismissal were obvious that applicant failed to adduce sufficient reason for the delay,

hence this appeal against the decision refusing extension of time pegged on three grounds of appeal that;

1. *"That, the trial chairman erred in law and in facts for erroneously failure to consider that there was the illegality on the decision of the Kisesa ward tribunal for its composition contravene the law which governing the ward tribunal hence lacks jurisdiction to maintain the matter*
2. *That, the trial Chairman erred both in law and in facts for failure to acknowledge that there was no proper advise given to the appellant hence failed to file an appeal in time.*
3. *That, the trial chairman erred in law and facts for failure to acknowledge that the land in dispute were 2 acres of land and decision came up was of 35 acres of land hence lead to miscarriage of justice."*

In this appeal, appellant was unrepresented, he appeared in person while the respondent had the services of Mr. Shabani Mvungi learned Advocate. In his submissions, appellant was brief but focused. He lamented on denial of his rights to be heard as according to him, the grant of the application for the extension of time was the only avenue for him to complain against the decision of the Ward tribunal which he said was tainted with illegalities.

Mr. Mvungi counsel for the respondent opposed the appeal submitting that, the composition of members in the Ward Tribunal was as required by the

law and that appellant failed to adduce good grounds for extension of time. He however admitted that the dispute before Kisesa Ward tribunal was in respect in two acres, but the respondent was awarded the area measuring 35 acres. He finally urged the court to dismiss the appeal for lacking in merit.

In his short rejoinder, appellant stated that the centre of dispute at the trial tribunal was two acres, but the tribunal found respondent owner of 35 acres, which he said it was illegal on the face of the record.

I have curiously considered the grounds of the appeal, parties' submissions as well as the lower tribunals records. The obvious issue here is whether the appeal is meritorious or not.

As hinted earlier on, this appeal stems from the decisions by the DLHT refusing extension of time to appeal out of time. According to **section 20 (1) of the Land Dispute Courts Act Cap 216 RE 2019** any party aggrieved by the decision of the Ward Tribunal is required to appeal to the DLHT within 45 days after the decision sought to be appealed against. The section reads:

*20.-(1) Every appeal to a District Land and Housing Tribunal shall be filed in the District Land and Housing Tribunal within forty-five days after the date of the decision or order against which the appeal is brought*

The records show that the Ward Tribunal pronounced its judgment on 06/11/2020. The appellant appeal was to be filed by 20/12/2020. This was

not done. To rescue the situation, applicant on 22/1/2021 filed an application for extension of time subject of this appeal. Usually, the test for determining an application for extension of time, is whether the applicant has established some material facts amounting sufficient cause or good cause as to why the sought application is to be granted. See: **Regional Manager, Tanroads Kagere V. Ruaha Concrete 2 Company Ltd**, Civil Application No.96 Of 2007 (CAT unreported).

My duty is therefore to see if the appellant did what he was legally required to do. Two reasons were deposed for the delay in the applicant's affidavit. Technical delay, improper advised and an additional ground of an illegality on the impugned decision argued during hearing of the application. On this last ground appellant claimed that the trial ward tribunal was rendered against the 35 acres of land while the dispute was only over two acres, the decision was without the opinion of its members and lastly that one of the tribunal members did not sign the decision.

The issue of illegality was according to the ruling of the tribunal rejected due to failure by the appellant to attach the decision intended to be appealed against for it to see the alleged anomalies . And the issue of improper advice raised was found insufficient to warrant the grant of the application for extension of time.

Indeed, the appellant application was so brief such that, the tribunal was left without evidence upon which to decide in favour of the appellant. Firstly, the issue of illegality on the impugned decision did not feature in the affidavit in support of the application. It only arose during parties'

submissions before the tribunal. Secondly, neither the decision by the Ward Tribunal nor the order striking out Revision Application No 161 of 2021 were attached to the affidavit. The Tribunal's observation that the application was without sufficient grounds was for that reason justified.

Ordinarily, I would have penned off here and let the matter take its natural death. But I have noted some unpleasant features on the decision of the Ward tribunal demanding a proper determination by this court. They include improper description of the suit land and composition of the trial tribunal. The question that has disturbed my mind is, should the anomalies left to stay because the application for extension of time was unestablished? I am aware of the holding in **Adelina Koku Anifa and another V Bryarubaga Alex**, Civil Appeal No. 46 Of 2019(Unreported,) where the Court of Appeal quoted with approval the decisions in **Marwa Mahende v. Republic** [1998] T.L.R. 249 to the effect that:-

*"We think . . . the duty of the Court is to apply and interpret the laws of the country. The superior courts have the additional duty of ensuring proper application of the laws by the courts below"*

The Court went ahead saying:

*"It is certain therefore, that where the lower court may have not observed the demands of any particular provision of law in a case, **the Court cannot justifiably close its eyes on such glaring illegality because it has duty to ensure***

***proper application of the laws by the subordinate courts and/or tribunals.***”( *Emphasis mine*)

Again, in **Halima Hassan Marealle v. Parastatal Sector Reform Commission and Tanzania Gemstone Industries Limited**, Civil Application No. 84 of 1999 (unreported), the Court of Appeal said, revision powers of the Court can be applied to rectify any error, illegalities or impropriety in a decision or proceedings of the court which come or are brought to its attention. This tallies with the provisions of section 43 (1) of the Land Dispute Court Act (Cap 216 RE 2019) which reads:

*"43.-(1) In addition to any other powers in that behalf conferred upon the High Court, the High court- (a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice, and all such tribunals shall comply with such direction without undue delay;*

***(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such***

***decision or order therein as it may think fit.***“(The bold is mine)

This court is therefore, guided by the above authorities have power to rectify errors material to the merit of the case involving injustice. Having directed myself to the powers of this court, then parties were, as required invited to address the court on the points and they both Mr. Mvungi advocate for the respondent and appellant conceded to the anomaly and sought for the court’s directives on the matter.

Reverting to the issues. **One**, it is obvious from the trial court proceedings that the appellant claim was for two acres of land only but the respondent at the end, was awarded the 35 acres of land. The tribunal decision partly reads:

*" Kuanzia leo tarehe 6/11/2020 Baraza linamkabidhi eneo lote Sayi Denja alitumie kama mali yake halali ..."*

Loosely translated, the tribunal said, Sayi Denja is given the ***whole suit land*** to use it as his own property.

Before me, parties agree that the respondent was handled the 35 acres and not the two acres subject of the dispute. The trial tribunal went astray. This is a land dispute where, the courts/ tribunal’s jurisdiction is limited to the specific portion of land subject of the dispute between the parties. The award, at any rate could not go beyond the specified area unless there are reasons to so do, which must be specified in the decision.

In this case, there are no reasons given on why the award was for 35 acres of land and not the two acres subject of the dispute and the Ward Tribunal was bound to pronounce a decision basing on the parties claim contrary to which renders the decision invalid.

**Second**, the claim by the appellant at the trial tribunal was laid without proper description of the suit land. The two acres claim was determined without defining its location and boundaries. It is a settled principle of the law that, any claim of land should comprise a proper description of the suit land for definite and complete execution order. See for instance **Daniel Dagala Kanuda (supra), the Board of Trustees of F.P.T.C Church v the Board of Trustees of Pentecostal Church**, Misc. Land Appeal No.3 of 2016 (unreported). The trial tribunal treaded on the same error by awarding the respondent 35 acres without properly naming its boundaries and location. This order is inexecutable as the 35 acres awarded to the respondent were undefined and therefore could not be defined from the village land which is again not mentioned by the parties.

**Three**, the trial tribunals proceedings do not indicate the coram of the Tribunal during trial creating doubt on trial tribunals 'composition. **Four**, the chairman who presided over the Tribunal is not named anywhere in the proceedings. **Five**, the decision of the Ward tribunal was signed by the chairperson and the secretary who is not a member. Section 4(2) read



together with section 6(3) of the Ward Tribunals Act; the Secretary is not a member of the Ward Tribunal. The provision reads:

“6(3). Appointment to the office of Secretary shall be permanent in the service of the Local Government Authority within which the Tribunal to which he is appointed to be Secretary is situated.”

Section 24 (2) of the Ward Tribunal Act, stipulates the responsibilities of the secretary of the ward Tribunal. The section states:

*(2) The Secretary of a Tribunal shall be responsible for recording all the evidence adduced and other matters formally transpiring during the proceedings before the Tribunal and all other matters in connection with it.”*

It falls therefore that the secretary of the Ward tribunal is not a member of the tribunal for dispute resolution purposes. In this case, copies of the trial tribunals decisions availed to the parties are signed by the chairperson and the secretary of the tribunal showing that he took part in the decision-making contrary to the law. In the case of **Nada Qori versus Isaki Gilba**, Miscellaneous Land Appeal No. 2 of 2013, High Court of Tanzania, Arusha(unreported) Hon. S. E. Mugasha(as she then was) held that:

*"A Secretary is not a member of the Ward Tribunal but an employee of the Local Government Authority. In the circumstances, as the decision is signed by the secretary, the same is tantamount to the disputed being determined by the Secretary who is not a member of the Ward Tribunal, and such decision is illegal"*

**Six**, though the decision contains a list of five members of the trial tribunals, none of them was made to sign the decision making it difficult to ascertain their role in decision making. Ward tribunal like any other tribunal are creatures of the statute and they derive its powers from the law in which they are established. The Ward tribunal are established under the Ward Tribunal Act Cap 206 R.E 2019. Section 4 of the Ward Tribunal Act read together with section 11 of the Land Dispute Courts Act, (Cap 216 R.E 2019) provide the minimum and maximum quorum of the Ward Tribunal. The sections read: -

*"4 (1) Every Tribunal shall consist of-*

*a) Not less than four or more than eight members elected by the Ward Tribunal Committee from amongst a list of names of persons residing in the Ward compiled in the prescribed manner;*

*b) A chairman of the tribunal appointed by the appropriate authority from among the members elected under paragraph (a)*

*2. There shall be a secretary of the tribunal who shall be appointed by the local government authority in which the*

*Ward in question is situated upon recommendation by the committee.*

*3. The quorum at a sitting of a Tribunal shall be one half of the total number of members.*

*4. At any sitting of the tribunal a decision of the majority of members present shall be deemed to be the decision of the tribunal, and in the event of equality of votes the chairman shall have a casting vote in addition to his original vote"*

And section 11 of the Land Dispute's Court Act states: -

*"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."*


The composition of the Ward Tribunal is, in terms of the above provisions, at least 4 but not more than eight members elected by the Ward Committee which includes the chairman. The quorum at a sitting of a Tribunal is one half of the total number of members and the decision of the majority is the decision of the Tribunal.

The record of the Ward Tribunal, as it stands, does not meet the requirements of section 11 cited above. This is a serious omission rendering the entire proceedings and decision of the trial tribunal a nullity. Unfortunately, the DLHT confined itself in dealing with the prayers for extension of time that was placed before it, leaving the errors above undetected.


Given the circumstances of the case, I think, this Court is justified to invoke its revisional powers under section 43 (1) of the Land Dispute Land Disputes Courts Act, (Cap. 216 RE 2019) and revise all the lower tribunal's proceedings. Both decision and proceedings of the lower tribunals are quashed and set aside. This takes the parties to the position they were before the filing of the suit before the Ward tribunal. Any interested party may, if so wishes, re-institute a fresh land matter in accordance with the law. Given the fact that no party is to blame for the irregularities pointed out, I order each party to bear owns costs.

It is so ordered.



  
**E.Y. MKWIZU**  
**JUDGE**  
**3/06/2022**

**COURT:** Right of appeal explained

  
**E.Y. MKWIZU**  
**JUDGE**  
**3/6/2022**