

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

AT SHINYANGA

LAND APPEAL NO. 26 OF 2021

*(Arising from Land Application No. 46 of 2020 of the Maswa DLHT originating from
Land Complaint No. 19 of 2020 of Nyabubinza Ward Tribunal)*

**AMOSI BELA LUKANDA..... APPELLANT
VERSUS**

MATHIAS JOSEPH KATORO RESPONDENT

JUDGMENT

10th May & 3^d June 2022

MKWIZU,J.:

This is a second appeal emanating from the decision of the District Land and Housing Tribunal for Maswa in Land Appeal No. 46 of 2021 originating from the decision in Land Complaint No. 19 of 2020 by the Nyabubinza Ward Tribunal where the appellant lost in both lower tribunals.

The facts gathered from the records are that: in Nyabubinza Ward Tribunal the respondent sued the appellant for a declaration that he is a lawful owner of the suit land measuring two and a half acres claiming to have acquired the land through purchase from one Charles Sosoma at a purchase price of 2,000,000/= . He constructed a house and grew some

potatoes on the suit land before they were destructed by the respondent after the encroachment.

Respondents claims were strongly opposed by the appellant who claimed to have bought the suit land measuring 1/4 acres at a purchase price of 800,000 and a house worth 500,000 from Kwangu Sosoma .The trial tribunal found for the respondent. It declared him lawful owner. Appellant was ordered to vacate the suit property or pay the respondent 800,000/= value of the house in question within fourteen days plus 50,000 fines.

Appellant was not happy, he unsuccessfully appealed to Mawa DLHT hence this appeal premised on four grounds raising three main complaint that, *Ward Tribunal decision is a nullity for lack of signatures of its members, Ward tribunal went beyond its powers in awarding respondent Tsh. 50,000/= as a fine, the tribunal relied on the contradictory evidence by the respondent and lastly is the refusal by the trial tribunal to receive evidence of the appellant's witness, KWANGU SOSOMA,*

When the appeal was called on for hearing, both appellant and the respondent appeared in person unrepresented. Two issues were raised in the Appellant's submissions in support of the appeal, refusal by the trial tribunal to accord appellant's witness Kwangu Sosoma chance to testify and failure by the members of the tribunal to sign the Ward tribunal's decision

In reply, respondent contended that Kwangu Sosoma was not even mentioned as a witness at the trial tribunal and that the complained decision was signed by all members.

I will tackle the issue of regularity or otherwise of the trial tribunals' decision first. First ground is a complaint that the decision of the trial tribunal lacks the signature by the members. This is a new ground not raised at the first appellate court. As the records would reveal, the appellant had five grounds of appeal at the 1st appellate court and none of them touched on the validity of the decision by the Ward tribunal. The Court has on several occasions held that a ground of appeal not raised in first appeal cannot be raised in a second appeal unless they are point of law. See the case of In **Westone Haule V Republic**, Criminal Appeal No 504 of 2017 (Unreported) where Court of appeal held as follows:

"Our law is settled that matters which were not canvassed by the first appellate Court cannot find way in the second appellate Court unless it relates to a legal issue..."

Undeniably, composition of Ward tribunal is a legal issue worth discussion even at this stage of the proceedings. This ground challenges the composition of the trial tribunal. 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 2002). 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 member 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."

Gleaned from the above provisions of the law is that the composition of the Ward Tribunal is 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.

I have revisited the trial tribunals proceedings. The record does not indicate the coram of the Tribunal at the time of hearing the case. Though there is an appended list of five members at the end of the proceeding, the names list is without member's signature to signify their actual attendance during the hearing of the matter. The chairman who presided over the Tribunal is not named anywhere in the proceedings making it difficult to ascertain the composition of the tribunal. Further to that, the decision of the Ward tribunal contains only one signature without disclosure of the name or title. All members of the trial tribunal seem to have not participated in making the decision.


The provisions of the law above, are coached in a mandatory term. 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 judgement a nullity. This ground alone suffices to determine the appeal, and therefore will refrain from determining the rest of the grounds.

In the upshot, the proceedings and decisions of the trial Ward tribunal are a nullity. I proceed to nullify the same and the resultant decision. The DLHT proceedings and decision are also quashed and set aside for being grounded on a nullity. Any interested party may if so wishes re-institute a

land dispute before an appropriate land tribunal in accordance with the law.

Considering the nature of the proceedings and since the pointed-out irregularities were committed by the trial tribunal. I order each part to bear own costs. It is so ordered.

Date at Shinyanga this 3rd day of **June** 2022


E.Y. MKWIZU
JUDGE
3/6/2022

Court: Right of appeal explained to the parties.


E.Y. MKWIZU
JUDGE