

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 115 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma
in Land Appeal No. 207 of 2020; Originating from Morotonga Ward
Tribunal in Land Dispute No. 13 of 2020)*

JOSHUA KOSKEY ARAMAIYO APPELLANT

Versus

DANIEL MAKOWA MACHOTA RESPONDENT

JUDGMENT

13.09.2022 & 13.09.2022

Mtulya, J.:

In its interpretational mandate, our superior court in judicial hierarchy, the Court of Appeal of Tanzania (the Court), on 5th November last year, 2021 was invited in the precedent of **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018 (the appeal), to interpret the laws enacted in sections 4 of the **Ward Tribunals Act** [Cap. 206 R.E. 2002] (the Ward Tribunals Act) and section 11 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act). After full hearing of the appeal, the Court, at page 5 of the judgment, had resolved that:

*The above recited provisions of law clearly and mandatorily require that a properly constituted ward tribunal shall consist of **at least four members**,*

*and not more than eight members, **three of whom being woman.***

(Emphasis supplied).

This interpretation was further qualified by requirement of two conditions, namely: first, displaying of gender status of all members who participate in decision making in ward tribunals (see: **Anne Kisonge v. Said Mohamed**, Land Appeal No. 59 of 2009); and second, display of coram of the ward tribunal on each day of the proceedings (see: **Musa Onani v. Nose Maige**, Land Appeal Case No. 20 of 2010).

This thinking has received a bundle of precedents of this court and Court of Appeal and now it is a well-established practice in our courts (see: **Tabu Makongoro v. Robert Kusekwa**, Misc. Land Appeal Case No. 31 of 2022; **Adelina Koku Anifa & Joanitha Sikudhani Anifa v Byarugaba Alex**, Civil Appeal No. 46 of 2019; **Nyangi Marwa Nyangi v. Mwita Petro**, Misc. Land Appeal Case No. 4 of 2022; **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021; **Mwita Wiranga v. Pilly Sincha**, Misc. Land Appeal Case No. 70 of 2020; **Alexander Mshauri v. Regina William**, Misc. Land Appeal Case No. 64 of

2020; and **Kassimu Ngoroka v. Bernard Masembula**, Misc. Land Appeal Case No. 3 of 2016).

In the precedent of **Anne Kisonge v. Said Mohamed** (supra), this court was disturbed by failure of the ward tribunal to reflect members' participation on each day of trial and their gender status. The mostly celebrated passage from the precedent is reproduced herein for purposes of easy appreciation of the matters:

*My interpretation of the cited law is that: **the names and gender of the members participating in a case in the ward tribunal must be shown in order to ascertain its composition as whether it is in compliance with the law.** Those members who participated during trial, their names and gender must be recorded on coram on each day the trial takes place up to the stage of judgment. Failure to follow proper procedure, it is a difficult to know as in this case, the members who participated to compose the judgment were the same as those who appeared during trial.*

(Emphasis supplied).

In the present case, the record shows that six (6) members participated in the proceedings of **Morotonga Ward Tribunal** (the ward tribunal) in **Land Dispute No. 13 of 2020** (the dispute), namely: **Christopher Majam, Nyakanyenge Nyambureti, Mahiti Sekori, Rebeka Mariko, Rose Kichora** and **Juma C. Nyarukoba**. However, there was no display of gender status on each specific member of the tribunal contrary to the directives of this court and Court of Appeal in the above indicated precedents. When the parties were summoned to appear today in this court, and consulted on the fault, Mr. Joshua Koskey Aramaiyo (the appellant) stated that there were two (2) women, namely Rebeka and Rose, but the record is silent on their gender status.

Mr. Daniel Makowa Machota (the respondent) on his part decided to invite the legal services of Mr. Cosmas Kisute Tuthuru to argue the appeal. On his part, Mr. Tuthuru briefly submitted that the directives of the Court of Appeal in the precedent of **Edward Kubingwa v. Matrida A. Pima** (supra) is the law and must be followed without reservations. In his opinion, the Court of Appeal stated on three (3) women members whereas the appellant is talking of two (2) members, which contrary to the law. Finally, Mr, Tuthuru prayed nullification of the proceedings and quashing of the decisions of the lower tribunals.

Following the cited fault, it is obvious that the proceedings of ward tribunals amounted to a nullity and decision emanated from the nullity proceedings cannot stand on record (see: **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021 and **Tabu Makongoro v. Robert Kusekwa** (supra).

Having said so, I have decided to quash decisions and set aside proceedings of the district and ward tribunals for want of proper application of laws (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi** (supra); and **Jirabi Ruhumbika Biseko v. Kirigini Saoke**, Civil Appeal Case No. 29 of 2021).

This dispute is supposed to receive a *trial de novo* order from this court. However, following the enactment of section 45 of the **Written Laws (Miscellaneous Amendment) (No. 3) Act No. 5 of 2021**, which amended section 13 (2) and 16(1) of the Act to strip off powers of the ward tribunals, this court is not positioned to order the same. I have therefore decided to let it open to any of the parties, if so wish, to lodge a fresh and proper land dispute in an appropriate forum in accordance to the current laws and procedures regulating land disputes.

I am aware the parties have incurred costs in attending this dispute. However, I have decided to make no any order as to costs. The reason is obvious that the appellant is lay person and the wrongs were caused by the ward tribunal and blessed by the district tribunal. In any case, the fault was noted by this court *suo moto* and dispute may take new course in accordance to new enactments to identify the rightful owner of the contested land.

Ordered accordingly.

A blue ink signature of F. H. Mtulya, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

F. H. Mtulya

Judge

13.09.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Joshua Koskey Aramaiyo and in the presence of the respondent's learned counsel, Mr. Cosmas Kisute Tuthuru.

A blue ink signature of F. H. Mtulya, identical to the one above, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

F. H. Mtulya

Judge

13.09.2022