

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

MISC. LAND APPEAL NO. 27 OF 2022

*(Arising from Muleba District Land and Housing Tribunal in Misc. Land Application No. 123/2019 and
Original Civil Case No. 42/2018 at Ijumbi Ward Tribunal)*

**LEONIDA LAUREAN..... APPELLANT
VERSUS**

ANITHA LAUREAN..... RESPONDENT

JUDGEMENT

Date of Judgment: 17.08.2022.

A.Y. MWENDA, J

Before the District Land and Housing Tribunal for MULEBA at MULEBA, the appellant filed an application seeking leave to file an appeal out of time. In support to her application she swore an affidavit in which she advanced reasons for her delay to lodge appeal against the Ward Tribunal's Judgment in Civil Case No. 42 of 2018. The reasons so advanced are that before the Ward Tribunal she was advised to go back and institute a probate cause against the estates of her late husband and when she complied, she came to realize that her case reached a stage of execution of the decree without notice. She stated further that it took her time to acquire a copy of judgment and look for a lawyer as she did not know the procedure to make application for leave to appeal out of time. She added that

her delay was occasioned by the fact that she was misled by the trial Tribunal. Having considered submissions from both parties, the Hon. Chairman ruled out that the appellant failed to advance sufficient reasons for delay and the said application was dismissed.

Aggrieved by the ruling of the District Land and Housing Tribunal, the appellant approached this Court armed with a memorandum of appeal consisting of five grounds which were opposed by the respondent with a reply to that effect.

At the hearing of this appeal both parties were in attendance and under legal representations. For the appellant was Mr. DANTAN MUTAGAIHYWA, learned counsel whilst for the respondent was Ms. GISELA MARUKA, learned counsel.

When invited by the Court to submit in support of grounds of appeal, Mr. DANSTAN informed the court that he was abandoning the 1st and the 2nd grounds of appeal thereby remaining with the 3rd, 4th and 5th grounds which he was going to argue collectively/jointly.

In support of the remaining grounds of appeal the learned counsel for the appellant submitted that the District Land and Housing Tribunal's records were tainted with illegality which the District Land and Housing Tribunal ought to have considered as sufficient grounds to warrant extension of time. According to him the issue of locus Standi to sue was apparent on the face of records of the Ward Tribunal. He said this issue was raised by the appellant as he hinted the District Land and Housing Tribunal in her affidavit that she was directed to go and file

Probate Cause by the Ward Tribunal. The learned Counsel submitted that the said issue is a point of law fit to be a reason for extension of time. In support to this argument he cited the following cases as authorities to wit MGENI SEIFU VS. MOHAMED YAHAYA KAALFAN, CIVIL APPLICATION NO. 1 OF 2009 at page 8, 2nd para; CITI BANK (T) LIMITED VS. TTCL & OTHERS TLR [1992] and CONVERGENCE WIRELESS NETWORK (MAURITIUS Ltd) & 3 OTHERS VS. WIA GROUP LTD & 2 OTHERS, CIVIL APPLICATION NO. 363B/2015 CAT, at page 7 & 14. He then concluded his submission with a prayer beseeching this Court to allow the present appeal.

Responding to the submissions by the learned counsel for the appellant, Ms. GISELA MARUKA, learned counsel for the respondent submitted that the argument that the appellant was directed to go and file Probate Cause is not on record and added that if at all the issue of probate was crucial then the applicant (now the respondent) ought to be the one directed in that regard. The learned counsel submitted that the parties in the present appeal are related and relying on the authority in a case of EDWARD NTIKULE VS. EVARIST NTAFAATO, MISC. LAND APPEAL NO. 11 OF 2022 HC (unreported) page 5 & 6 she said if the property has already been distributed to heirs under customary law, and there is no resistance from any of the members of the clan for a considerable period, then the one holding the land can sue or be sued without following probate procedures because the land does not belong to the deceased any more. With regard to the case of

MGENI SEIFU VS. MOHAMED YAHAYA KHALFAN [supra] cited by the learned Counsel for the appellant, Ms. Gisela submitted that the principles regarding the issue of Locus Standi are correct especially on the disputes over the property of the deceased by the 3rd party but as opposed to circumstances of this appeal, the said case is silent over the disputants who are related. Ms. GISELA said that the respondent had Locus Standi to sue as the property in question was already bequeathed to her and for that matter the case of MGENI SEIF is distinguishable. She concluded her submission by stating that the appellant advanced no good reasons because what she purports to be illegality is not illegality at all, rather a misconception of procedure. She prayed the decision of Ward Tribunal and that of the District Land and Housing Tribunal to be upheld and this appeal be dismissed. In a brief rejoinder, the learned counsel for the appellant submitted that the case of MGENI SEIFU was decided by the Court of Appeal which is a superior Court and therefore this Court should follow its findings as it is not distinguishable. He added to the effect that any person claiming to be a beneficiary over the land, the root of title should be traced in the probate process. He concluded by repeating to his previous prayer beseeching this court to allow this appeal as the appellant raised the issue of illegality in his affidavit before the District Land and Housing Tribunal.

Having concluded the hearing of this appeal, the court fixed the 12/08/2022 as the judgment date. However in the cause of composing a judgment, the court

detected illegalities in respect of the Ward Tribunal's records. The said illegality is in regard to composition and involvement of the Members. This issue necessitated reopening of the proceedings to enable the learned counsels for both parties to give out their views.

When invited to submit in that regard, Mr. DASTAN MUTAGAIHWA, learned counsel for the appellant submitted that he, having gone through the Ward Tribunal's Records noted an unclear involvement of Members. He said, members who were in attendance when the complaint was received are different to those who were present on the judgment date. On top that he hinted that while the Tribunal was in a visit at the Locus in quo, the evidence was recorded thereat but the issue of involvement of members is unclear. He said it is trite law that involvement of assessors should be from the beginning to the end of the matter and added that any change of assessors vitiates the whole proceedings. To support this position, he cited the case of AMEIR MBARAKA & ANOTHER V. EDGAR KAHWILI, CIVIL APEAL NO. 154 OF 2015 at page 2, 1st paragraph and the case of SIKUZANI SAID MAGAMBO & ANOTHER V. MOHAMED ROBLE, CIVIL APPEAL NO. 197 OF 2018, CAT, (Unreported). He also added in that at the locus in quo some individuals who are not recognized by the law were involved as Members by going further to asking questions. Further to that, he said, even after the visit of locus in quo, the records are silent as to whether the tribunal re convened so as to afford the parties an opportunity to hear what was recorded during the visit and issue

their comments. With this submission, the learned counsel concluded while praying this appeal to be allowed.

On her part, Ms. GISELA RUGEMALILA, learned counsel for the respondent was of similar views to those advanced by Mr. DANSTANT MUTAGAIHWA. Briefly, she stated that in the Ward Tribunal's records, there is a change of members which vitiates the proceedings. To support her argument, she cited the case of Y.S HAWAL V. DR. ABBAS TEHERALI, CIVIL APPEAL NO. 70 OF 2017, CAT (Unreported).

Having received the submissions from the learned Counsels for both parties, the duty before me is to determine the fate of the present appeal.

As I have stated earlier, before the Ward tribunal there are anomalies which renders the whole proceedings a nullity, these are, **firstly**, a change of Members who were involved in the hearing, **secondly**, failure by the Chairman to indicate the gender of Members who participated in the proceedings **and thirdly**, lack of proceedings.

Before discussing every bit of the said anomalies it is important to point out that composition of the Ward tribunal and the involvement of the Members are creatures of the Statute. Regarding Composition of the Ward Tribunal, the legal back up is found under section 4(1) (a) of the Ward Tribunals Act, [Cap 206 R.E 2019]. This section reads as follows, that;

"Every Tribunal shall consist of not less than four and not more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the Ward compiled in the prescribed manner."

In regard to involvement of Members and observance of gender before the tribunal, Section 11 of the Land Disputes Courts Act, [Cap 206 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."

In the present appeal, in the Coram, the names of Members who were in attendance on the filing of the suit i.e. on 23/08/2018 and on the judgment date i.e. on 14/11/2018 did not show their respective gender. On top of that there is no proceedings to show the Coram of the members who participated during the hearing. With these shortfalls, it is difficult to assess the composition of the tribunal and as such it is as if the composition of the tribunal was not observed at all.

Also, while on the 23/08/2018 when the applicant (now the respondent) filed her complaint, the Hon. Chairman sat with the aid of IMELDA ANANIAS, ANSELEMI GOTTFRIDI and HERMAN ERASMUS as Members but on the judgment day i.e. 14/11/2018 the Hon. Chairman sat with different members who are HILDAGILDA

LEOPORD, JOSEPH B. NDEGE. and ALODIA JOANES. With these two sets of Members, it is obvious that none of them heard the case from the beginning to the end. Faced with similar scenario, this Court [NGIGWANA, J] in the case of EDWIN KAKWESIGABO AND ANOTHER V. ADVENTINA GEREVASI, Misc. LAND APPEAL NO. 33 OF 2021, held inter alia, that;

"...it cannot be said that the dispute was heard and determined by the Tribunal which was properly constituted on the obvious reason that there was tremendous change of members notwithstanding the fact that the case was heard and concluded within one month. No explanation offered as to why the same members were not maintained..." [emphasis added]

Lastly, the tribunal's proceedings appears on two dates that is, the date when the application was received and when the judgment was delivered. It is however silent as to when the application was heard and who was in attendance. With this anomaly is difficult to conclude that the composition of the tribunal was observed and proper.

From the foregoing reasons, as it was rightly submitted by the learned counsels of both sides, the Ward tribunal's record is tainted with illegalities and since the present appeal emanates from its decision, this appeal is hereby allowed. Also by invoking revisionary powers vested to this court under section 43(1) (b) of the

Land Disputes Courts Act, [Cap 206 R.E 2019], the proceedings of the Ward Tribunal are nullified and its judgment and orders emanating therefrom are quashed and set aside.

Each party shall bear its own costs.

It is so ordered.




A.Y. Mwenda

Judge

17.08.2022

Judgment delivered in chamber under the seal of this court in the presence of Mr. Danstan Mutagahywa, learned counsel for the Appellant and in the presence of Ms. Gisela Rugemalira, learned counsel for the Respondent.




A.Y. Mwenda

Judge

17.08.2022