

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

**MISC. LAND APPEAL NO. 48 OF 2022**

*(Arising from Appeal No. 35 of 2020 in the District Land and Housing Tribunal for Karagwe at Kayanga  
and Originating from Civil Case No. 43 of 2019 in the Igurwa Ward Tribunal)*

**JUVENT MAGANGA-----1<sup>ST</sup> APPELLANT**

**REVELIAN MICHAEL-----2<sup>ND</sup> APPELLANT**

**VERSUS**

**LEONIDAS BEITEMIZIZI----- RESPONDENT**

**RULING**

**Date of the Last Order:       06/09/2022**

**Date of Judgment:           06/09/2022**

**A.E. Mwipopo, J.**

The appellants namely Juvent Maganga and Revelian Michael were sued by the respondent namely Leonidas Beitemizizi in Civil Case No. 43 of 2019 at the Igurwa Ward Tribunal for trespassing into the suit land situated at Igurwa Village. The trial Ward Tribunal dismissed the case and declared the appellants as the rightful owners of the suit land. The respondent successfully appealed to the Karagwe District Land and Housing Tribunal in Appeal No. 35 of 2020 where the decision of trial Ward Tribunal was set aside and respondent was declared a

rightful owner of the suit land. The appellants were not satisfied and they filed the present appeal.

On the hearing date the counsel for the respondent namely Advocate Lameck John Erasto informed that Court that there is irregularity in the proceedings of the trial Ward Tribunal which vitiates the proceedings before it. He said that there is no quorum of the trial Ward Tribunal during trial as result it is not known if the trial Ward Tribunal was properly composed during trial. Also it is not known if the members of the trial Ward Tribunal who heard witnesses are the one who composed the judgment. He said that the omission is fatal and he prayed for the Court to quash the proceedings of the trial Ward Tribunal and that of the Appellate District Land and Housing Tribunal and its judgments be set aside.

The Court invited the counsel for the appellants to address the Court on the pointed irregularity and he said that the proceedings of the trial Ward Tribunal has revealed that the names of Members of the Tribunal who were present when the witnesses were testifying were not recorded. He supported the submission by the counsel for the respondent that the remedy in such situation is to quash the proceedings and judgments of the trial Ward Tribunal and appellate District Land and Housing Tribunal.

As it was rightly observed and submitted by the counsel for the respondent, the record of proceedings of the Igurwa Ward Tribunal show that the trial Ward

Tribunal was not composed properly during trial. I have perused the proceedings of the trial Ward Tribunal and the same revealed that the composition of the members of the trial Ward Tribunal during trial is not known. The record of the Ward Tribunal during trial does not provide name and gender of the members of the Ward Tribunal who were present when witnesses were testifying. The Ward Tribunal record is silent on the dates when the trial took place and there is no quorum or names and gender of members of the trial Ward Tribunal who were present when the witnesses were testifying. What is available in the record is the names of members who composed the decision of the trial Ward Tribunal. There is nothing in the record which shows that these members of the Ward Tribunal who composed the decision were the one who heard witnesses giving their testimonies.

The composition of the Ward Tribunal is provided by section 11 of the Land Disputes Court Act, Cap. 216 R.E. 2002. The section provides as follows, I quote:-

*"11. 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."*

From above cited provision, the Ward Tribunal is properly constituted where it consist of not less than four nor more than eight members of whom three shall be women. The section is made in mandatory terms as result the Ward Tribunal

has jurisdiction to determine the land matter before it when it is properly constituted according to the law.

In the case of **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, Court of Appeal of Tanzania at Tabora, (unreported), it held at page 6 of the judgment that:-

*"It is thus, very apparent that throughout the trial it is only three members who participated and finally decided the case contrary to section 11 of the Act which require that in constituting the Ward Tribunal, the least number of members should be four members. If we may add, the other ailment in the composition of the trial Tribunal was the fact that the issue of gender was completely not observed. Of the three members who participated in the trial, none of them was a woman contrary to the mandatory requirement of the law.*

*The failure and the irregularity by the trial Tribunal to observe the mandatory requirement on the composition of the trial Tribunal, did not only vitiate the proceedings and the resulting decision of the trial Tribunal but it also rendered the trial Tribunal lack jurisdiction to try the case."*

Taking the position of the Court of appeal in the above cited cases, when the composition of trial Ward Tribunal during trial in the land case is contrary to the provision of section 11 of Cap. 216, R.E. 2002, it renders the trial Ward Tribunal to lack jurisdiction to try the case. In the present case, the proceedings of the trial Ward Tribunal does not show members who were present during trial. The

Composition of the members of the Ward Tribunal is supposed to be according to the law. The same has to be reflected in the proceedings and in the Judgment to show that it was properly constituted to hear and determine the case before it. In the case of **Anne Kisunga vs. Said Mohamed, Land Appeal No. 59 of 2009**, High Court Land Division, at Dar Es Salaam, (Unreported), while discussing section 11 of the Land Disputes Courts Act held that, I quote:-

*"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 difficult to know as in this case, the members who participated to composed the judgment were the same as those who appeared during trial."*

The similar position was stated in another case of **Mariam Madali v. Hadija Kihemba**, Misc. Land Case Appeal No. 16 of 2019, High Court Land Division, at Dar Es Salaam, (Unreported), where it held that:-

*"In my view, composition of the tribunal is not a mere procedural issue, it is in fact a determining factor as whether the institution that adjudicated the matter was really a Ward tribunal within the meaning of Section 11 of Cap. 216 or something else. Tribunals must ensure that they are properly constituted when adjudicating cases because failure to that reduces their status as ward tribunals to legally unknown institution."*

From the decisions cited above, it is crucial that the name and gender of the members of the Ward Tribunal who participated during trial in the Ward Tribunal to be recorded on each day the trial takes place up to the stage of judgment. The record of the Igurwa Ward Tribunal does not show the name and gender of members of the Ward Tribunal who heard the case. The silence of the record of proceedings on the composition of the Members of the Ward Tribunal on the hearing dates makes it difficult for the Court to ascertain from the proceedings whether the Members of the Trial Tribunal were properly composed and they met the quorum. It is not possible to ascertain if the Members of the Tribunal who heard witnesses are the one who composed the judgment, hence, it could not be assumed that the Igurwa Ward Tribunal had jurisdiction to determine the land case before it. This omission vitiates the proceedings of the Ward Tribunal as it was stated in the case of **Francis Kazimoto vs. Daglas Mkunda**, Misc. Land Appeal No. 123 of 2016, High Court Land Division, at Dar Es Salaam, (Unreported), where this Court held that-

*"In my opinion therefore, since the proceedings of the Trial Tribunal are silent on the membership composition on various dates of hearing the case, it is obvious that the judgment and proceedings under scrutiny are null and void."*

Therefore, the Court finds the trial Ward Tribunal was not properly composed and as a result the trial Ward Tribunal lacked jurisdiction to determine

the matter. Consequently, the proceedings of Igurwa Ward Tribunal and that of the District Land and Housing tribunal for Karagwe at Kayanga are hereby quashed and the decisions thereof are set aside. Each part is at liberty to institute a fresh case before the competent District Land and Housing Tribunal according to the current laws. Given the circumstances of this case, each party to bear his cost of this suit. It is so ordered accordingly.

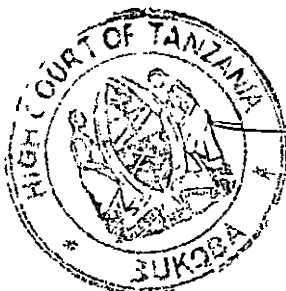


**A.E. Mwipopo**

**Judge**

**06.09.2022**

**Court:** Ruling was delivered in the presence of the 1<sup>st</sup> and 2<sup>nd</sup> appellants, counsel for the appellant, the respondent and the counsel for the respondent.



**A.E. Mwipopo**

**Judge**

**06.09.2022**