

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 55 OF 2020

*(Originating from the District Land and Housing Tribunal for Iramba at
Kiomboi in Land Appeal Case No. 32 of 2017 which originated
from Shelui Ward Tribunal).*

HAMPHREY MKUMBO.....APPLICANT

VERSUS

SHANGO KALENGA.....RESPONDENT

JUDGEMENT

Date of Last Order: 22/03/2022

Date of Judgment: 29/04/2022

Mambi, J.

In the District Land and Housing Tribunal (The DLHT), the appellant unsuccessfully appealed against decision of the Ward Tribunal. The DLHT made the decision in favour of the respondent. Earlier on, the respondent sued the appellant at Shelui Ward Tribunal (herein the trial Tribunal) claiming that the appellant had crossed the border to his

land. The appellant on the other hand, maintained that the complained parcel was his land.

Having heard both parties, the trial Tribunal decided in favour of the respondent. Dissatisfied, the appellant appealed before the Iramba District Land and Housing Tribunal. The DLHT upheld the trial Tribunal's decision. The appellant dissatisfied once again is appealing before this Court, preferring five grounds of appeal, as follows;

1. *That, The District Land and Housing Tribunal erred in law and in fact by not taking into account the limitation of time, as the appellant had acquired and used the disputed land by purchase over 12 years without interference, Hence this appeal.*
2. *That, The District Land and Housing Tribunal erred in law and in fact by not considering the fact that, the corum of members of the Ward Land Tribunal at each sitting was not shown, Hence, this instant appeal.*
3. *That, The District Land and Housing Tribunal erred in law and in fact by failing to observe that, the Ward Tribunal was not well and properly composed at each sitting and on the date of passing their decision, Hence this appeal.*

4. *That, The District Land and Housing Tribunal erred in law and in fact by failing to consider that, the respondent is the one who trespassed into the applicant's land. Hence this instant appeal.*
5. *That, The District Land and Housing Tribunal erred in law and in fact by failing to consider the fact that, the Ward Land Tribunal in itself became witnesses and never gave the appellant the right to cross examine the witnesses found on the locus in quo instead, the members of the Ward Tribunal cross examined the witnesses in the locus in quo worse still nothing was recorded in their decision. Hence, this instant appeal.*

Submitting for the appellant Ms. Sarah Ngereza-Learned Advocate, in her written submissions, dropped the 5th ground of appeal and for the 1st ground of appeal she contended that the disputed parcel of land is 10x18 paces out of 30x30 owned by the appellant. The counsel submitted that the appellant used the suit land interruptedly for about sixteen years until 2016 when this dispute arose. In view of this, the counsel faulted the DLHT for failure to consider the longtime occupation of the suit land by the appellant in its decision.

With regards to the 2nd and 3rd grounds of appeal, Ms. Sarah submitted that the DLHT was wrong in its decision for failure to consider the fact that the trial Tribunal was not properly composed at each sitting and on the date of judgment. The counsel pointed that the trial Tribunal on 2/1/2017, 30/1/2017 and 16/2/2017 was not properly constituted. The counsel hinted that, on those days Zainabu Omary acted as the Chairperson of the trial Tribunal whereas Taabu Hassan acted as a secretary. It was Ms. Sarah's concern that it was wrong for Taabu Hassan to sign as a secretary as well as member of the trial Tribunal participating in hearing and decision making, as it appears in the list of tribunal's members. The learned counsel argued that this was wrong as per Section 11 of the Land Disputes Courts Act, Cap 126 R:E 2019. Ms. Sarah added that the records show that on 19/12/2016 when the trial Tribunal started hearing the evidence, only four names are listed in the proceedings, including Taabu Hasani. The counsel contended that if Taabu Hasan was a secretary then the tribunal on that day was composed of only three members contrary to the requirement of the law.

Ms. Sarah continued in submitting that, section 11 above also provides for the requirement of members of the Ward Tribunal to be not

less than four and not more than eight of which three shall be women. The counsel faulted the trial Court's proceeding for not indicating the gender by title (such as Mr. or Ms.) making difficult for anyone to know if the members were composed of both men and women.

Addressing the fourth ground, the appellant counsel averred that the appellant evidence was strong and proved his ownership of the suit land sized 10x18 paces.

I have considerably gone through grounds of appeal, submissions by the parties and records. In my view one of the issue to be answered is whether the trial Tribunal was properly composed throughout the hearing of the case. The second issue is whether the appellant is the adverse possessor of the suit land. If the 1st and 2nd issues are answered in affirmative, then the last issue is whether the Tribunals below properly assessed the evidence by parties.

Starting with the first issue. I have gone through the trial Tribunal's proceedings, from when the complaint was filed on 19/12/2016 until when it was decided on 16/02/2017. In all those days the proceedings show a list of five members of the trial Tribunal to have participated except on 19/12/2016 the day when the complaint was filed, where only four members showed up.

My perusal from the proceedings just show the list of names and their signatures of the members of the trial Tribunal attended in each day. However that list does not show who was a secretary of the trial Tribunal. The claim by the appellant counsel that Taabu Hasan was the one acting as a tribunals' secretary has no merit. The records show that Tabu Hassan just appeared as the member of Tribunal. It should be noted that under the Land Disputes Courts Act, Cap. 216 R:E 2019, a secretary is not a member of the Ward Tribunal. He is not required to participate in the decision making in the Ward Tribunal apart from receiving complaints and recording the Tribunal's proceedings. The members of the Ward Tribunal are the ones solely vested with powers of decision making. See Section 11 and 17.

The legal issue is whether it was improper and fatal for the proceeding to contain list of members of tribunal only without the secretary. My settled view is that since a secretary is not a party in the quorum of the Ward Tribunal, then the absence of the names of the secretary in the Ward Tribunal's proceedings does not vitiate the Ward Tribunal's proceedings. Therefore, in the case at hand the absence of the names of the secretary who recorded the trial Tribunal's proceedings does not vitiate the trial tribunals proceedings.

Additionally, since the trial Tribunal's proceedings shows that the members who heard and finally decided the case were more than four, then it means that Section 11 of the Land Disputes Courts Act Cap. 216 above was complied with. More specifically section 11 of Cap. 216 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."*

The above provision is clear that the law require for the Ward Tribunal to consist of not less than four or not more than eight members. Since there were four members, the tribunal was properly constituted as per the requirements of section 11 of Cap. 216.

It should be noted from the outset that the creation of the Ward Tribunal was to enable disputes in the community be resolved simply and peacefully. It was aimed also that amicable resolution of dispute at community level in a village or ward to be of paramount in furtherance of social and economic interests of the parties and community as a whole.

In order to achieve this aim, it is not expected the Ward Tribunal in dispensation of justice to adopt strenuous and hard principles or rules as are used in ordinary courts.

Principally, the Land Disputes Court Act, Cap. 216 RE 2019 provides

13.-(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunals Act, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.

Reference can also be made in the Ward Tribunals Act, Cap 206 RE 2002, under s. 15 and 16 provides;

*"15(1) The Tribunal shall **not be bound** by any rule of evidence or **procedure** applicable to any court.*

*(2) The Tribunal shall, subject to the provisions of this Act, **regulate its own procedure.***

(3).....

On the other hand section 16(1) provides that:

"Notwithstanding the provisions of section 4, the Tribunal shall in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originate."

However, in instances where the law has limited the Ward Tribunals procedures, failure to adopt them in appeal can be dispensed with. Reference can be made to section 45 of Cap 216 which reads as follows:-

"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."

Addressing the rationale of the above provisions the Court of Appeal in **YAKOBO MAGOIGA GICHERE VS. PENINAH YUSUPH**, CIVIL APPEAL NO. 55 OF 2017 at page 14 had this to say;

Section 13 of the Land Disputes Courts Act underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements.

Furthermore with the coming of the principle of overriding objective, which require courts to dispense justice without undue regard to technicalities, failure to show the gender of the tribunal members can be dispensed with.

Having seen the intention of the law regulating land dispute resolutions and the principle of overriding objective. It is my settled view that failure of the Ward Tribunal proceedings to show gender of the members who were involved in determining a case, does not vitiate the proceedings. What one is expected to do is just to see the nature of the names of the persons attended according to either their culture/tradition, religion or geographical areas with which the tribunal is situated.

In the case at hand the names of the trial Tribunal members who determined the impugned decision are Asha Kikas, Taabu Hasan, Zainabu Omari, Jumapili Lyanga and Seleman Gyunda. These names do not need a rocket to ascertain who were women and who were men. Basically, according to Islamic religion or culture the names Asha, Tabu and Zainab are given to women. These names indicated that the gender especially of women were properly considered as required by section 11 of the Ward Tribunal Act.

Coming to the second issue, issue on Adverse possession as it was rightly submitted by Lucas Komba-learned counsel for the respondent, one cannot benefit under the doctrine of adverse possession when he claims ownership of the suit land. This means the adverse possessor must not be a true owner of the suit land except that he got it adversely of the true owner and he have been using it inconsistently with the enjoyment by the true owner of land for more than 12 years without interference or disturbance.

For one to qualify under adverse possession, he must meet the legal requirement addressed in the decision relied by the respondent's counsel Mr. Komba of **REGISTERED TRUSTEES OF HOLLY SPIRIT SISTERS TANZANIA VERSUS JANUARY KAMILI SHAYO AND 136 OTHERS, CIVIL APPEAL NO. 193 OF 2016 (CAT ARUSHA)** where the

Court of appeal held that on the whole, the person seeking to acquire title to land by adverse possession has to cumulatively prove the following:-

- (a) *That there had been absence of possession by the true owner through abandonment;*
- (b) *That the adverse possessor had been in actual possession of the piece of land;*
- (c) ***That the adverse possessor had no color of right to be there other than his entry and occupation;***
- (d) *That the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;*
- (e) *That there was a sufficient animus to dispossess and an animus possedendi.*
- (f) *That the statutory period, in this case twelve years, had elapsed;*
- (g) *That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*

(h) *That the nature of the property was such that, in the light of the foregoing, adverse possession would result.* Emphasis supplied

The appellant in trial Tribunal and in his submission before this Court claimed that the suit land is his, having bought in 2000 from one NEEMA LYANGA, that since then he has been using uninterruptedly to 2016 when this dispute arose. These statements disqualifies the appellant from relying on the doctrines of adverse possession. Then it follows that the appellant is not the adverse possessor of the suit land.

Having answered the two issues above in the affirmative, I wish to answer the last issue as to whether the Tribunal below assessed properly the parties' evidence or who among the parties adduced heavier evidences.

There is no dispute that when the appellant was buying his land of 30x30 paces from one Neema Lyanga in 2000's, the respondent was living there already. There is also no dispute that during the purchase of the said land, the seller and the purchaser never involved the neighbours to witness the transaction. The respondent herein just stated that he found no need of involving the surrounding neighbours just because on the transaction day there was a seller and a ten-cell leader (Balozi). Although there is no rule of law requiring the involvement of

surrounding neighbours to witness the sale of un-surveyed land, practice has been to involve them, such that the seller doesn't sell his land plus of his neighbours.

The appellant and his witnesses in this case did not tell as to why he didn't require the neighbours to witness the transaction, yet the respondent was living in his neighbouring land. When he bought his land in 2000's the appellant left it to the use (farming) of Alex Kando. That it was until 2016 when he noticed the respondent built a new fence encroaching into his land a size of 10x18 paces. The evidence of the respondent shows that having built his house in 2000 prior to the coming of the appellant he planted trees surrounding his land, and that has been his borders with his neighbours to date.

This Court is satisfied that the respondent's evidence before the trial Tribunal is heavier than that of the appellant. Meaning that the respondent's evidence proved that the suit land his land.

In view of the foregoing discussions, I have no reason to fault the decision made by Iramba District Land and Housing Tribunal and trial Tribunal rather than upholding them. That, said I find that this appeal lacks merit and is hereby dismissed in its entirety. No orders as to costs.

Order accordingly.



A. J. MAMBI

JUDGE

29/04/2022

Judgment delivered in Chambers this 29th day of April, 2022 in presence of all parties.



A. J. MAMBI

JUDGE

29/04/2022

Right of appeal explained.



A. J. MAMBI

JUDGE

29/04/2022