

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 91 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Tarime at
Tarime in Land Appeal No. 103 of 2020)*

BETWEEN

PENINA MANYAKI RUBUYI APPELLANT

VERSUS

OCHIENG' WAYOGA RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

Before this court it is the second appeal lodged by the appellant herein after being aggrieved by the decision of the District Land and Housing Tribunal for Tarime (the DLHT) in Land Appeal No. 103 of 2020.

The appellant filed the Land Case No. 44 of 2020 before Nyandoto Ward Tribunal in Tarime. The Case was against the respondent herein and another person namely, Suleman William Rubuyi. The appellant who stated to be the administratrix of the estates of the late Agnes William Rubuyi (her mother) claimed the land which was sold by Suleman William Rubuyi (her brother) to the respondent. The appellant complained that his brother who is not administrator of the estate sold the said family land without family consent. The respondent, on his part, testified that he purchased the disputed land legally and that it belongs to him now. At the

end, the trial Tribunal delivered the judgment in favour of the respondent and declared him to be the rightful owner of the disputed land.

The appellant unsuccessfully appealed to the DLHT as the DLHT upheld the decision of the trial Ward Tribunal. Still determined to pursue her rights, the appellant lodged this appeal. The appeal has six grounds which I shall not reproduce for the reasons that I will explain later.

When the appeal was placed before me for hearing, the appellant was represented by Ms. Florida Makaya, the learned advocate while the respondent had the services of Mr. Ostack Mligo, the learned advocate.

Before the counsel took the floor for the duel, Mr. Mligo told the court that he has noticed that the trial Tribunal proceedings were a nullity for want of proper composition of the Ward Tribunal. He argued that, the requirement of three women members in the composition of the Ward Tribunal was not observed on 16th July, 2020 when the appellant's 2nd witness gave his testimony before the trial Tribunal. Mr. Mligo added that on the subsequent dates the coram was not indicated. He thus prayed the lower Tribunals proceedings to be quashed and parties to be directed to start afresh as per the requirement of the law. He also prayed each party to bear its own costs.

Ms. Florida Makaya, concurred with the observations made by the respondent's counsel. Further, both counsel unanimously agreed that the

issue of composition of the Ward Tribunal is sufficient to dispose of the appeal.

As rightly argued by both counsel, it is the requirement of the law that the proper composition of the Ward Tribunal should include at least three women. This is according to Section 11 of the Land Disputes Courts Act. The Sections reads;

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.

Thus, it is a mandatory requirement of the law that whenever the Ward Tribunal is composed the number of women should not be below three. According to the record dated 9th July, 2020, the Ward Tribunal was composed of five members namely;

Rahel Onyango, Nyamani Keraryo, Lusina Roche, Zakaria M. Rioba and Ernest C. Mugendi.

Of all five members, it is only Rahel Onyango and Lusina Roche who are women. This tells it all that the Ward Tribunal was not duly constituted. Moreso, as submitted by Mr. Mligo, the trial Tribunal record subsequent to 19th of July, 2020 is silent on the composition of the Tribunal.

In view of the above, I totally agree with both counsel that the trial Tribunal was not properly constituted hence the proceedings before it were a nullity. Similarly, the appellate proceedings and judgment in the DLHT were a nullity as they emanated from the nullity proceedings. See the case of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora.

In the event, I nullify the proceedings and set aside the judgements of the two lower Tribunals. Since the Ward Tribunals, in terms of sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, do no longer have jurisdiction to adjudicate land matters, I decline to order a retrial. Instead, I direct that a party who still wishes to pursue the matter, may institute a case afresh before a Tribunal of competent jurisdiction subject to the current legal requirements. Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

21/10/2022