

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 16 OF 2022**

*(Arising from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 107 of 2021)*

**BETWEEN**

**NCHAGWA WAMBURA NYAMHANGA ..... APPELLANT**

**VERSUS**

**NYANGI MSABI ..... RESPONDENT**

**JUDGMENT**

**A. A. MBAGWA, J.:**

This is the second appeal which emanates from the decision of the District Land and Housing Tribunal for Mara (the DLHT) sitting as the first appellate Tribunal in Land Appeal No. 107 of 2021.

Initially, the matter started in the Ward Tribunal. The appellant herein filed Land Case No. 51 of 2020 against the respondent before the Ward Tribunal for Mihingo in Bunda District. He claimed that the respondent encroached on his piece of land and started uprooting the sisal and grazing his cattle in the disputed land. In rebuttal, the respondent disputed the claim against him and at the end the Ward Tribunal decided in favour of the respondent.

Aggrieved by the decision of the Ward Tribunal, the appellant appealed to the DLHT. However, the appellant's efforts were in vain as the DLHT upheld the Ward Tribunal's decision. Still determined to overturn the results, the appellant now has knocked the door before this court with five grounds of appeal challenging the decision of the DLHT. For the reasons that I will explain later, I wish not to reproduced the grounds of appeal by the appellant.

During hearing of the appeal, the appellant stood in person while the respondent enjoyed the services of Mr. Evance Njau, the learned advocate.

In his submission, the appellant adopted his grounds of appeal to form part of his submission and he added that the composition of trial Ward Tribunal consisted of two women instead of three. He therefore prayed the court to allow his appeal.

Mr. Evance Njau absolutely concurred with the appellant on the composition of the Ward Tribunal. Referring to section 11 of the Land Disputes Courts Act and the case of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora, Mr. Evance Njau submitted that the proceedings in the Ward Tribunal were a nullity since the composition of the Tribunal was not properly constituted as per the

law. The counsel thus prayed the court to nullify the proceedings of the lower Tribunals and each party to bear its own costs as the was error committed by the Tribunal.

After appraising appeal record and parties' submissions, the issue which I am called upon to determine is whether the composition of the trial Ward Tribunal was properly constituted as per requirement of law.

Section 11 of the Land Disputes Courts Act requires the quorum of the Ward Tribunal to consist the minimum of four members of whom three must be women. The section 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.***

The section is coached in mandatory terms. Thus, it is a mandatory requirement that composition of the Ward Tribunal must consist of not less than three women.

In the case at hand, the record of Mihingo Ward Tribunal shows that the composition of the Tribunal when deciding the parties' disputes consisted of four members namely; Pilly Nchama, Raphael Maseke Mkami, Regina Thomas and Kawawa Kyeyo.

Looking at the names of all the four members though the proceedings do not indicate their gender, it is only two names to wit, Pilly Nchama and Regina Thomas which look feminine. As rightly argued by the appellant who was present at the hearing in trial Tribunal and supported by the respondent counsel, it is with no gainsaying, that the proceedings of a Mihingo Ward Tribunal in Land Case No. 51 of 2020 contravened section 11 of the Land Disputes Courts Act.

It therefore necessarily follows that the trial Tribunal was not properly constituted. Consequently, the proceedings and judgment before Mihingo Ward Tribunal 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 (supra)**.

From the foregoing reasons, I shall not dwell into determining other grounds of appeal as the issue of composition of the trial Tribunal is sufficient to dispose of the appeal.

I therefore, nullify the proceedings and set aside the judgments 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, he may institute a case afresh before a Tribunal of competent jurisdiction subject to the current legal requirements. Since the error which lead to the disposition of this appeal was committed by the trial Tribunal, each party should bear its own costs.

It is so ordered.

Right of appeal is explained.



  
**A. A. Mbagwa**

**JUDGE**

**21/10/2022**