

**“ORIGINAL”**

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT TANGA**

**LAND APPEAL NO. 29 OF 2022**

(Arising from Land Appeal No. 43 of 2020, original Land Case No. 14 of 2019 KOMKONGA Ward Tribunal)

**JUMA HASSAN MSANGAZI-----APPELLANT**

***VERSUS***

**JUMA HUSSEIN MJALIWA-----RESPONDENT**

**JUDGEMENT**

**Mansoor, J:**

**DATE OF JUDGEMENT- 11<sup>TH</sup> NOVEMBER 2022**

The appellant filed a claim at Komkonga Ward Tribunal against the respondent. He claims that the respondent has trespassed into his land by 6 footsteps wide and 10 footsteps long. The appellant claims that he owns a piece of land at Kwa Chalima Village in Komnyembe Neighbourhood, Komkonga Ward in Handeni District. That the respondent has trespassed into the land on 17<sup>th</sup> December, 2019, and that the respondent is building a structure on that piece of land. The appellant claims that he got the land since 1979, and has

been in occupation of that piece of land for 39 years undisturbed. The dispute was referred to Komkonga Ward Tribunal, and after trial, the Ward Tribunal entered judgement in favour of the respondent for the reasons that there was evidence that the respondent purchased that piece of land from Abdala Mohamed Fungo, and members of Mzee Hassan, the father of the appellant were involved in the sale and the agreement was legal and lawful. The appellant failed to prove his case, and it was discovered that the appellant was claiming for the land of his father, and he had no locus to sue in his own capacity. The Ward Tribunal also ruled that the evidence of the appellant was contradictory, thus, unreliable.

Aggrieved, the appellant appealed to the District Land and Housing Tribunal, his appeal failed, and he filed the 2<sup>nd</sup> appeal before this Court raising three grounds of appeal.

The first, second and third grounds of appeal were that the Komkonga Ward Tribunal sat with incomplete coram. The appellant who appeared for hearing unrepresented said the Ward Tribunal was improperly constituted and could not hear

the case. He also said there were no women sitting in the Tribunal contrary to section 11 of the Ward Tribunal Act. I have seen the proceedings of the Ward Tribunal. The coram was Five, there was Juma B Mabmbinje, the Chairman, Eliuyanjo P Ivanja, Zahara H Mhina, Hamsini Kagada, and Mtambo Msangazi.

Going by the records, the Coram of the Ward Tribunal was duly constituted, there were five members and some of them were women. In any case, the proceedings before the Ward Tribunal are flexible not requiring strict procedures, the non-mentioning of the names of the secretary in the proceedings or no mentioning the gender of the members is not fatal and cannot vitiate the entire proceedings. The Ward Tribunal in the conduct of their affairs are not bound by the formal procedures. The conduct of their business is informal and flexible depending on the environment, custom and culture of the area, and they are not bound by strict procedures under any procedural laws. No due administration of justice was impeded, and the irregularities, if any, did not cause any

failure of justice. The irregularities pointed out by the appellant did not result in miscarriage of justice and did not prejudice any party to the proceedings as long as the Coram was complete despite the variance in recording the names or gender of Members in attendance in some days, and as long as the witness was cross examined and re-examined by the adverse parties in the other sittings. Again, on record, parties had participated fully not only before the Ward Tribunal's sittings but also during the visit at the locus in quo. After all, the courts now are observing the principle of overriding objective brought by the Written Laws (Miscellaneous Amendments) (No.3) Act, (Act No 8 of 2018, which requires the courts to deal with cases justly, and to have regards to substantive justice. This was said by the Court of Appeal in the case of **Yakobo Magoiga Gichere vs Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT** (unreported) in which it was *held that:*

*"no decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reserved or altered on appeal or*

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*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 evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice,”*

In the spirit of the above cited case and law and all the arguments hereinabove, the first, second and third grounds of appeal lacks merits, and they are dismissed.

Regarding the new ground argued by the appellant, that the judgement of the lower Tribunal was delivered in his absence, this ground was not raised in the Memorandum of Appeal, and parties are not allowed to introduce new ground of appeal during the hearing without the leave of the Court. If the appellant wanted to add a new ground of appeal, he was to ask for leave of the Court to do so. A party is precluded from introducing new ground of appeal in submissions or during the hearing. In any case, I perused the records of the Ward Tribunal and saw that the Judgement was delivered on 06

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April 2020, and the records shows that the appellant was present when the judgement was pronounced. The appellant was addressed on his right to appeal. The appellant is estopped from trying to impeach the records of the Trial Tribunal.

Based on the above, the appeal lacks merits, and it is dismissed with costs. The decisions of the lower Tribunals are hereby confirmed in that the land in dispute is the property of the respondent.

**DATED and DELIVERED at TANGA this 11<sup>TH</sup> day of NOVEMBER, 2022**

