

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

MISC. LAND APPEAL NO. 13 OF 2022

(C/F Tumati Ward Tribunal in Land Complaint No. 39/2021 and the District Land and Housing Tribunal for Mbulu at Dongobesh in Land Appeal No. 20 of 2021)

ROSEMARY MARGWEAPPELLANT

VERSUS

MAGRETH GIRAY.....RESPONDENT

JUDGMENT

10/10/2021 & 14/11/2022

MWASEBA, J.

The appellant herein, **Rosemary Margwe**, is challenging the decision of the District Land and Housing Tribunal of Mbulu at Dongobesh (herein will be referred to as DLHT) which dismissed her appeal arising from Tumati Ward Tribunal. At the Ward tribunal, Magreth Giray, filed an application against the appellant claiming for a piece of land estimated to be three (3) acres located at Endoji Vilage, Tumatu ward in Mbulu District.

Briefly, the facts leading to this appeal are that; the respondent herein, filed an application at Tumatu Ward Tribunal, claiming for the piece of

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land measured four (4) acres alleged to have been invaded by the appellant herein. On her side, the appellant and her witnesses claimed that a disputed land belong to the appellant and they never saw the respondent to the said land as she is living in another village.

After the hearing and a visitation to the locus in quo, the Ward Tribunal decided that the disputed land belong to the respondent herein due to the evidence adduced before the tribunal and ordered the appellant to vacate the suit land immediately. The said decision aggrieved the appellant who unsuccessful filed an appeal to the District Land and Housing Tribunal of Mbulu at Dongobesh. The decision of the DLHT led to the present application after the appellant being dissatisfied with its decision.

Before this court the appellant was armed with five (5) grounds of appeal.

The said grounds of appeal are as hereunder:

- 1. That, the trial tribunal erred in law and fact by entertaining the matter which it has no jurisdiction to do so.*
- 2. That, the trial tribunal erred in law and fact for failure to administer its important role of reconciliation before entertaining the matter.*
- 3. That the trial tribunal erred in law and fact for entering and deciding that without quorum being completed.*



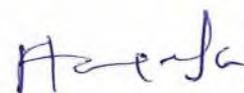
4. That the trial tribunal erred in law and fact for failure to evaluate the evidence adduced by the appellant herein.

5. That the trial tribunal erred in law and fact for lack of legal reasoning.

At the hearing of this appeal, Mr Ndibalema Johnson, learned counsel appeared for the appellant whilst the Ms Yasinta Amos, appeared on behalf of the respondent after being given power of attorney by the respondent. The appeal was argued by way of written submission whereby both parties adhered to the schedules.

In support of the appeal, on the first ground, the appellant alleged that the ward tribunal entertained the matter while the value of the property was more than three (3) million as submitted by the appellant at the ward tribunal. She added that instead of transferring the matter at the District Land and Housing Tribunal, the ward tribunal proceeded with the hearing contrary to **Section 10 of the Ward Tribunal Act**, Cap 206 R.E 2002. She cemented her point by citing the case of **Makame Makesi vs Zaituni Msomi**, Misc. Land Appeal No. 30 of 2021 (HC- Unreported)

Responding to this ground, the respondent argued that when she was filling her case at the Ward tribunal, she was very sure that the value of



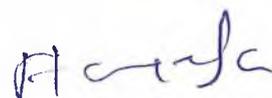
the property was less than three million (3), thus, the allegation that the Ward Tribunal lacks merit is baseless.

On the second ground of appeal, the appellant challenged the act of the ward tribunal to reconcile the parties to reach into an amicable resolution prior to the hearing as required Under **Section 13 (1) of the of the land Disputes Courts Act**, Cap 216 R.E 2019.

On her side, the respondent replied that, mediating the parties depends on the nature of the case and willing ness of the parties. Since they were not ready for mediation, the trial tribunal was correct to proceed with the hearing of the case.

Coming to the third ground of appeal, the appellant complained that the trial ward tribunal decided the matter without having a required quorum as per **the Ward Tribunal Act**, Cap 206 of 2002. She submitted further that even a secretary was nowhere in the records of the tribunal which means one of them acted as a secretary. The said argument was supported with the case of **Musa Makweta Musa vs Faraja Credit Finance**, Civil Appeal No. 08 of 2021 (HC- Unreported).

Replying to this ground, the respondent submitted that the quorum of the tribunal was met and the secretary of the ward tribunal does not add to



the number of members of the ward tribunal required to hear the application. Thus, this ground lacks merit too.

As for the fourth ground of appeal, the appellant argued that the trial ward tribunal failed to evaluate the evidence of the appellant who submitted that she owns the disputed land for more than 65 years, a claim which was supported by her witnesses and the respondent failed to prove ownership over the disputed land.

The respondent replied that, both the trial tribunal and the 1st appellate court did evaluate the evidence of both sides where by the appellant failed to prove his 65 years occupation of the disputed land as alleged. More to that, the appellant did not state if he is the administrator of the estate of his late father rather, she said the suit land belong to herself. Thus, on the balance of probabilities, the respondent proved her case.

Coming to the last ground of appeal, the appellant alleged that the judgment of the trial ward tribunal lacks legal reasoning. She added further that, the trial ward tribunal failed to evaluate that the respondent was not an administratrix of the estate of the late Giray Qadwe. More to that the respondent admitted that he was not the owner of the disputed land and the same was taken by the Government and later be allocated to the appellant herein.



Responding to this ground, the respondent argued that the appellant is not aware of what it means by the words legal reasoning but the decision of the ward tribunal and the 1st appellate court did contain legal reasoning. Thus, there is no merit on this ground.

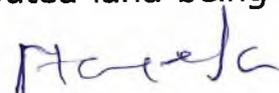
Having gone through the rival written submissions from both sides, also venturing the documents revolving around this appeal, this court will determine the issue of whether this appeal has merit.

Starting with the 1st ground of appeal, I have gone through the evidence of the trial tribunal, both the appellant and the respondent in their testimonies, never stated the price of the disputed land nor filling any valuation report regarding the price of the disputed land.

I am aware of **Section 15 of the Land Disputes Courts Act**, Cap 216 R.E 2002 which states, and I quote:

"Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 1985, the Jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings".

Guided by the cited provision and since the value of the property is unknown and no valuation report was submitted to prove the alleged price and taking into consideration the size of the disputed land being at the



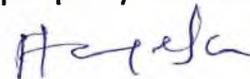
village, the ward tribunal had jurisdiction to entertain the matter which was also the position of the 1st appellate court. So, there is no merit on this ground.

Coming to the 2nd ground of appeal, **Section 13 (1) of the Land Disputes Courts Act**, Cap 216 R.E 2019 provides that:

"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."

Guided by the cited section, it is a requirement for a ward tribunal to conduct mediation prior to the hearing of the matter. However, it is on record that the ward tribunal failed to mediate them. Therefore, the trial tribunal was right to proceed with the determination of the matter as per **Section 13 (2) of Cap 216** R.E 2019. Keeping in mind that this matter was filed prior to amendment effected to this provision via Act No 5 of 2021 which deleted Section 13 (2) of Cap 216, R.E 2019. Therefore, this ground has no merit too.

Regarding the third ground of appeal, it is trite law that during every trial before the tribunal, the said tribunal must be properly constituted.



Section 4(1) (a) of the Ward Tribunal's Act, Cap 206 R.E 2002 states that:

"Every Tribunal shall consist not less than four nor more than eight other members elected by the ward committee from among a list of names of persons resident in the ward compiled in the prescribed manner."

See also **Section 11 of the Land Dispute court's Act**, Cap 216, R.E 2019.

Having gone through the records of the Trial Ward Tribunal, this court noted that the quorum during the hearing was as hereunder:

1. Bertha Petro- Mwenyekiti
2. Damiano Elias- Mjumbe
3. Martha Mathayo- Mjumbe
4. Magritha Zakaria-Mjumbe

Thus, guided by the cited authority and taking into consideration the numbers of the members who attended the hearing as shown above, this court finds that the quorum appeared as per the law. As it was held in the case of **Edwin Kekwesigabo and Another vs. Adventina Gerevazi**, Misc. Land Appeal No. 33 of 2021 (Unreported) the court held *inter alia* that:



"The quorum of the Ward Tribunal should be maintained in all sitting."

For the stated reasons, this ground lacks merit and is hereby dismissed.

As for the 4th and 5th grounds of appeal, the appellant challenged the evaluation of evidence done by the trial court and that its decision lacks legal reasoning which renders erroneous decision. On his part the respondent submission that the decision of the trial court did contain legal reasoning.

Having revisited the proceedings of the trial ward tribunal this court noted that, the ward tribunal having heard the submission from both parties and visiting *locus in quo* decided that the suit land belong to the respondent herein and not the appellant as alleged. I am aware that being the 2rd appellate court my duty is not to re-evaluate the evidence but to see whether there are points of law violated by the Ward Tribunal and the DLHT as a 1st appellate court during the evaluation of the evidence adduced by both parties.

Having done so, this court is satisfied that there is no point of law which was violated by the trial Ward Tribunal and DLHT during the determination of the case. After the hearing the case both Tribunals evaluated the evidence of both sides and come up with the decision that the evidence

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of the respondent was heavier than that of the appellant and his witnesses on the balance of the probabilities.

In the circumstances therefore, I find no merit in this appeal and proceed to dismiss it with costs.

It is so ordered.

DATED at **ARUSHA** this 14th day of November, 2022.



N.R. Mwaseba

N.R. MWASEBA

JUDGE

14/11/2022