

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**MISC. LAND APPEAL NO. 28 OF 2022**

(Arising from the Judgement and Decree in Land Appeal Case No.29 of 2021 before the District Land and Housing Tribunal for Manyoni at Manyoni, Original Case No.10 of 2021 before Sanza Ward Tribunal)

**MICHAELY KAULULE.....APPELLANT**

**VERSUS**

**MAKALA NKONGOLO MTOTO.....RESPONDENT**

*25/10/2022 & 10/11/2022*

**JUDGEMENT**

**MASAJU, J.**

The Appellant, Michaely Kaulule unsuccessfully sued the Respondent, Makala Nkongolo Mtoto before the Sanza Ward Tribunal. Being displeased, he appealed to the District Land and Housing Tribunal for Manyoni where he was unsuccessful too, hence this Appeal in this Court.

His petition of appeal contains five grounds of complaints including the third ground; *"That, the District Land and Housing Tribunal for Manyoni at Manyoni erred in law and facts by pronouncing judgement*

*without considering the coram of members while adjudicating the dispute thereto".*

The Appellant concluded his petition with a prayer that the Court allow the appeal and set aside the decision of the District Land and Housing Tribunal with costs. The Respondent contests the appeal as he filed a Reply to the Petition of Appeal to the effect that he strongly denied all the grounds of appeal thus putting the Appellant to strict proof thereof.

When the appeal was heard in the Court on the 25<sup>th</sup> day of October, 2022 both parties appeared in persons and prayed to adopt their Petition of Appeal and Reply to the Petition of Appeal in support of, and against the appeal in the Court, respectively. While rejoining, the Appellant maintained his submissions in chief.

After a keen perusal of the records and without having to linger on the matter, the Court is of the settled view that the third ground of appeal (as reproduced herein above) is meritorious. This is because throughout the proceedings of the trial Tribunal the coram was not composed of three members as required by the law.

On 01/10/2021 the coram comprised of seven members to wit; Laurent Chimalaunga, Emmanuel Kanunka, Dastan Lameck, Sales

Mnyachisongo, Helena Thomas Jumbe, Matrida Stephano and Matrina Pauly. On 13/10/2021 the coram comprised of five members to wit; Laurent Chimalaunga, Emmanuel Kanunka, Dastan Lameck, Sales Mnyachisongo and Helena Thomas Jumbe. On 20/10/2021 the coram comprised of seven members to wit; Laurent Chimalaunga, Emmanuel Kanunka, Dastan Lameck, Sales Mnyachisongo, Helena Thomas Jumbe, Matrida Stephano and Matrina Pauly. On 12/11/2021 the coram comprised of seven members to wit; Laurent Chimalaunga, Emmanuel Kanunka, Dastan Lameck, Sales Mnyachisongo, Helena Thomas, Matrida Stephano and Matrina Pauly.

The above trend was manifestly illegal because whilst the composition of Ward Tribunal is not less than four and not more than eight members of whom three must be women, as provided under Section 11 of the Land Disputes Courts Act, [Cap 216 RE 2019], the coram of the Ward Tribunal when adjudicating upon land disputes is provided for in section 14 of the Land Disputes Courts Act, [Cap 216 RE 2019] that, the Tribunal shall in all matters of mediation consists of three members at least one of them shall be a woman and that chairman to the Tribunal shall select all three members including a convener who shall preside at the meeting of the Tribunal.

Section 13(1) of the Land Disputes Court Act, [Cap 216 RE 2019] provides that the primary function of the Ward 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.

This Court has repeatedly maintained that, improper composition of the coram in a Ward Tribunal when adjudicating land matters is violation of the procedural law which in turn renders the resulting decision and order(s) thereof a nullity. Reference to this be made in the cases of **Adam Kishaluli v. Lazaro samwel Mlata** (HC) Misc. Land Appeal No. 37 of 2020, Dodoma Registry, **Daud Salua Masisila v. Idd sharia Mashoto** (HC) Misc. Land Appeal No. 36 of 2020, Dodoma Registry and **Salumu Itambu v. Josephat Njiku** (HC) Misc. Land Appeal No. 16 of 2020, Dodoma Registry (all unreported).

That said, the illegally constituted Tribunal cannot make a coram which can come up with a legally binding decision on a dispute. It follows therefore that, the illegal constituted trial Tribunal's proceedings, decision and order thereof in the instant dispute, Land Case No. 10 of 2021 in Sanza Ward Tribunal cannot survive the test of legality, hence a nullity along with the decision and proceedings of the Appellate Tribunal

in Land Case Appeal No. 29 of 2021 in the District Land and Housing Tribunal for Manyoni thereof.

By virtue of the Court's revisionary powers in Section 43 (1) (b) of the Land Disputes Courts Act, [Cap 216 RE 2019] the mediatorial proceedings and decisions of the dispute between the parties herein before the trial Tribunal along with the District Land and Housing Tribunal's record of proceedings, judgment and orders thereof are hereby severally and together nullified, quashed and set aside respectively. Unless the parties reach amicable settlement, the land dispute between them shall be heard *de novo* before a legally constituted coram comprising another set of members in the trial Tribunal accordingly in accordance with section 14 of the Land Disputes Courts Act, [Cap 216 RE 2019]. The parties shall bear their own costs.



  
GEORGE M. MASAJU

**JUDGE**

10/11/2022