

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA  
AT MUSOMA**

**MISCELLANEOUS LAND CASE APPEAL No. 55 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land Appeal  
No. 31 of 2021 & Original from Butuguru Ward Tribunal in Land Case No. 67 of 2019)*

**SABI NYAMHORI ..... APPELLANT**

**Versus**

**BINA NYAMATANGA ..... RESPONDENT**

**JUDGMENT**

**17.02.2022 & 17.02.2022**

**F.H. Mtulya, J.:**

On 27<sup>th</sup> January 2020, the **Butuguru Ward Tribunal in Butiama District of Mara Region** (the Ward Tribunal) delivered one page decision in **Land Case No. 67 of 2019** (the case) filed in its jurisdiction by Mr. Sabi Nyamhori (the appellant) against Mr. Bina Nyamatanga (the respondent). The decision of the Ward Tribunal was in in favour of the appellant.

However, the determination of the Ward Tribunal was signed by two (2) persons only, Chairman and Secretary of the Ward Tribunal, Mr. Baja Otwei and Mr. Ally Simba respectively, instead of all the members as per requirement of the law in section 4(4) of the **Ward Tribunals Act** [Cap. 206 R.E. 2002] (the Ward Tribunal Act). On the same course, all proceedings from the first hearing date, 28<sup>th</sup>

August 2019 to the completion of the proceedings on 27<sup>th</sup> January 2020, the members met and sat for the proceedings in the case five (5) times, but only two (2) times when all members were present and signed the proceedings. The record is silent on the reasons of absence of the other members of the Ward Tribunal during the conduct of the proceedings.

The decision of the Ward Tribunal was protested by the respondent in the **District Land and Housing Tribunal for Mara at Musoma** (the District Tribunal) in **Land Appeal No. 31 of 2020** (the appeal) and the District Tribunal at page 3 of the decision noted the defects of the Ward Tribunal and stated that: *baada ya wajumbe kusikiliza shauri na wote kutoa maoni yao kwamba mwomba rufaa ndie mshindi, Mwenyekiti na Katibu wa Baraza, ambao hata hawakushiriki kusikiliza shauri, walikuja na uhamuzi wao tofauti kwamba mjibu rufaa ndie mshindi.*

After noting the faults in the proceedings and decision of the Ward Tribunal, the District Tribunal was required to quash the decision and set aside the proceedings of the Ward Tribunal in the case, but the District Tribunal decided in favour of the respondent the reason are available at page 4 of the decision that: *kwa upande wangu sioni haja hiyo kwa sababu mwomba rufaa ndiye aliyeshinda*

*katika Baraza la Kata hivyo hakuwa na haja ya kukata rufaa.* The decision of the District Tribunal dissatisfied the appellant hence preferred the present appeal in this court registered in **Land Case Appeal No. 55 of 2012** attached with a total of four (4) grounds of appeal, and reason number four (4) reads, in brief that: the trial tribunal erred both in law and fact in basing on number of votes to deliver its decision instead of registered evidences.

Today when the appeal was scheduled for hearing, the parties invited learned minds in Mr. Edson Philipo and Mr. Thomas Ilanga, to argue the appeal for them. However, after brief consultations and discussions on the grounds of appeal, the parties agreed that ground number four (4) has merit, and as officers of this court, they informed this court on another point of illegality with regard to the absence of the names and signatures of members who took part in sitting and deciding the dispute at the Ward Tribunal. Finally, the learned minds agreed that for the proper application of land laws, the decisions of the lower tribunals be quashed and proceedings set aside.

On my part, I thank the learned minds have acted properly as officers of this court and displayed the application of section 66 of the **Advocate Act** [Cap 341 R.E 2019] (the Advocates Act) to assist

this court in arriving justice at speedy trial. I have glanced the record of this appeal and found out that four (4) members who sat in the Ward Tribunal during the hearing of the case. However, neither their names nor signatures were affixed on every day of the hearing. Again the one page decision in the case was duly signed by the Chairman and Secretary in absence of the other members who heard the case. The defect was noted by the District Tribunal, but declined to take appropriate measures for proper application of laws. This is a breach of the law in the Tribunals Act and amounts to illegality that cannot remain on record. This court has additional duty of ensuring proper application of the laws by the courts below, especially when there is vivid illegality at display of the record (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017).

Having stand so, I have decided to quash the decisions and set aside proceedings of both tribunals below in the Ward and District Tribunals. I award no costs in this appeal for obvious reasons that the learned minds in Mr. Philipo and Mr. Ilanga acted as officers of this court, and in any case the faults were not caused by the parties. Any of the parties who is still interested in the dispute may prefer a

fresh and proper suit in a competent authority mandated to settle land disputes in accordance to the law regulating land matter.

Ordered accordingly.



F. H. Mtulya

**Judge**

17.02.2022

This judgment was delivered in chambers under the seal of this court in the presence of the respondent, Mr. Bina Nyamatanga and in the presence of the learned counsels, Mr. Edson Philipo for the appellant and Mr. Thomas Ilanga for the respondent.

F.H. Mtulya

**Judge**

17.02.2022