

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

MISCELLANEOUS LAND APPEAL NO. 112 OF 2021

*(Arising from Land Appeal No. 48 of 2021 in the District Land and Housing  
Tribunal for Tarime at Tarime)*

CHRISTOPHER WANTORA ..... APPELLANT

VERSUS

MASERO MECK MAKURA ..... RESPONDENT

JUDGMENT

22<sup>nd</sup> & 25<sup>th</sup> February, 2022

A. A. MBAGWA, J.:

This is a second appeal which was initially instituted in the Ward Tribunal for Sirari. The respondent Masero Meck Makura sued the appellant Christopher Wantora on a claim of trespassing into his piece of land located at Pemba Village in Tarime District. The trial Tribunal, after hearing evidence from both parties, adjudged in favour of the respondent Masero Meck Makura. The appellant was not satisfied with the decision of the Ward Tribunal. He thus appealed to the District Land and Housing Tribunal for Tarime which, however, upheld the decision of the trial Tribunal.

Still aggrieved, the appellant filed this second appeal. He lodged a petition of appeal containing six grounds which I shall not reproduce for the reasons that shall be apparent shortly.



When this appeal was called upon for hearing, Tumaini Kigombe, learned counsel appeared for the appellant whereas the respondent was represented by Ms. Happiness Robert, learned counsel. The hearing was conducted through video conference.

Before Mr. Kigombe could submit on the grounds of appeal, this Court probed the learned counsels to address it on the issue whether the Ward Tribunal for Sirari (the trial Tribunal) was properly constituted when it heard and decided the matter.

After a brief brainstorming, both learned counsels were at one that, the composition of the trial Tribunal was not in accordance with the law. Mr. Kigombe argued and was supported by Happiness Robert that according to section 11 of the Land Disputes Courts Act, a ward Tribunal, at minimum, should be composed of four members of whom three must be women. It was the counsels' contention that the quorum does not indicate the gender but ostensibly the names appearing in the coram suggest that three members were men while only one woman formed part of the quorum. They thus invited the Court to nullify the proceedings and set aside judgments of the two lower Tribunals and thereafter order the matter to start afresh subject to the wishes of the parties.

I have keenly gone through the record along with submission made by the learned advocates. According to record, the Ward Tribunal was presided over by five members namely, Victoria Fanuel, Michael Sukare, Turuka

Makanya, Charles Elias and Samwel Togo (chairman). Unfortunately, the record does not indicate the gender of the sitting members. However, as submitted by counsels, it is only one name to wit, Victoria Fanuel which seems to be a female name.

Section 11 of the Land Disputes Courts Act 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'.***

From the foregoing provision it is clear that a Ward Tribunal would not be duly constituted unless it is presided over by at least four members of whom three must be women. Thus, a Ward Tribunal of which quorum lacks three women members is incompetent. See the case of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora.

In this case the Ward Tribunal met the minimum required number of four members but it fell short of the requisite three women. As such, the Ward Tribunal was not properly constituted. It therefore necessarily follows that the proceedings and judgment before the Ward Tribunal were a nullity. Equally, the appellate proceedings and judgment in the District Land and Housing Tribunal for Tarime were a nullity as they emanated from the nullity proceedings.

In the event, I quash the proceedings and set aside judgments of the two lower Tribunals.

Ordinarily, I would have ordered a retrial of the matter. However, through amendments made via sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, the Ward Tribunal does no longer have powers to determine land matters. See also **Edward Kubingwa vs Matrída A. Pima** (supra).

In the circumstances, a party who still wishes to pursue this matter may institute the suit afresh as per the current procedures and law.

Since the issue upon which this appeal has been determined was raised by the Court *suo motu*, I make no orders as to costs.

It is so ordered.

The right of appeal is explained.



**A. A. Mbagwa**

**JUDGE**

**25/02/2022**

**Court:** The judgment has been delivered in the presence of the appellant and his advocate Tumaini Kigombe assisted by Lilian Prosper Makene. Tumaini Kigombe was also holding brief for Happiness Robert for the respondent this 25<sup>th</sup> day of February, 2022.



**A. A. Mbagwa**

**JUDGE**

**25/02/2022**

Page 4 of 4