IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

MISC. LAND CASE APPEAL NO. 22 OF 2021

(Arising from Misc. Land Appeal No. 72 of 2018 of the District Land and Housing Tribunal at Bukoba. Originating from Land Case No. 09 of 2018 at Karabagaine Ward Tribunal)

SEVERINI NGILILEA..... APPELLANT

VERSUS

PASTORY MAGEZI ..... RESPONDENT

JUDGMENT

28/01/2022 &11/02/2022

NGIGWANA, J.

This appeal traces its origin from the decision of Karabagaine Ward Tribunal, wherein, the appellant as the administrator of the estate of the late Jones Ngililea instituted a suit against the respondent for encroachment into the land whose value is estimated to be Tshs. 1,000,000/=, located Kitwe within Bukoba Rural in Kagera Region, the property of the late Jones Ngililea.

On the other hand, the respondent claimed ownership of the said suit land saying he bought the same on 02/07/1992 from the deceased, and from that date, he went on enjoying the said land without any interference until 2018 when the dispute arose.

The trial tribunal after conducting a full trial, made a decision in favor of the respondent.

Aggrieved by the decision of the trial tribunal, the appellant appealed to the District Land and Housing Tribunal (DLHT) for Kagera at Bukoba. The appeal was registered as land Appeal No. 72 of 2018. Upon hearing of both parties and deliberation, the DLHT dismissed the appeal with costs for want of merit.

Undeterred, the appellant lodged the present appeal where he preferred five (5) grounds of appeal, upon which he urged the court to allow the appeal, quash and set aside the decision of the Ward Tribunal and the DLHT, and the respondent be condemned to pay costs of the suit.

The grounds of appeal as per memorandum of appeal can be summarized as follows;

1. *That, the appellate Tribunal erred in law and fact for failure to identify that the trial Tribunal was not properly constituted in law to determine the suit, of which occasioned a failure of justice.*

2. *That, the appellate tribunal erred in law when confirmed that the trial tribunal had pecuniary jurisdiction to entertain the matter.*

3. *That, hat both Tribunals erred in law and fact by deciding that the disputed land is the property of the respondent while the same is the property of Abagiri Abakitwe Clan.*

4. *That, the trial tribunal and appellate tribunal erred in law in giving legal force to the false sale agreement, as it did not include DANIEL KASIGWA KANGIRWA (Clan leader), the neighbors of the said suit premises, vendor's wife and children as witnesses of the sale agreement.*

5. *That, the trial tribunal and the appellate tribunal erred in law in admitting, proceeding and deciding the matter on the respondent's favor basing on hearsay evidence.*

In this appeal, the appellant had the legal services of Mr. Bengesi learned advocate while the respondent appeared in person and unrepresented.

For the interest of justice, leave was granted for the appeal to be argued by way of written submissions. Submissions of the appellant were drawn and filed by Mr. Eliphazi Benges, learned advocate while those of the respondents were drawn *gratis* by Mama's Hope Organization for Legal Assistance (**MHOLA**), and filed by the respondent.

Arguing the first ground of appeal, on behalf of the appellant, Mr. Benges submitted that the trial tribunal record revealed that the tribunal was not properly constituted and as such, the judgment was signed by two members only, and for that matter, the trial tribunal proceedings and judgment are a nullity. He added that, the trial tribunal proceedings and judgment being a nullity, the proceedings and judgment of the DLHT cannot stand. The learned counsel made reference to section 4 of the Ward Tribunal Cap. 206 R: E 2019 and Section 14 of the Land Disputes Act Cap. 216 R: E 2019.

On his side, the respondent submitted that the trial tribunal was properly constituted by four members, and the judgment was duly signed as required by the law.

She made reference to Section 4 of the Ward Tribunal Act Cap. 206 R: E 2019 and Section 11 of the Land Disputes courts Act Cap. 216 R: E 2019, and the case of **Salehe Abdala Seti (Administrator of the estate of the late Kazimari Mmoto) versus Flora Book and Jovina Ngaiza** Misc. Land appeal No. 74 of 2016.

Admittedly, the composition of the Ward Tribunal is taken care by section 4(1) of the Ward Tribunals Act Cap. 206 R: E 2019, and section 11 of the Land Disputes Courts Act Cap. 216 R: E 2019. The minimum number of members required to be present at every seating of the ward tribunal is four (4) while the maximum number is eight (8).

Where members are 8, then three of them must be women. It is also undoubted that, the issue of composition goes to the root of the case. Thus, unless properly constituted, the ward Tribunal has no mandate to determine the case. Any decision passed by a Ward Tribunal which is not properly constituted is not a decision but a nullity.

In the present case, the appellant argued that the appellate court erred in law in holding that the trial tribunal was properly constituted.

I have carefully gone through the record of the trial tribunal and found that, the matter was heard by four (4) members namely; **Laurent Ndibalema, Themestocles Francis, Maria Juria Protace and Theopister James.** The secretary of the Tribunal was **Mr. Alfred.**

The last paragraph of page 24 of the handwritten judgment of the trial tribunal read;

"Na hukumu hii imesomwa leo tarehe 22/06/2018 mbele ya wajumbe waolisikiliza shauri hili'.

Furthermore, the judgment was signed by three members namely; Laurent Ndibalema, Themestocles Francis and Theopista James. I have also learnt that; the said judgment does not appear to have been signed by Maria Juria Protace but her names are there.

However, I find the omission curable under section 45 of the Land Disputes courts Act cap. 216 R: E 2019 which provides that

"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or 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 any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice".

In the present case, there was failure of the 4th member to sign the judgment, no reasons available in the trial tribunal record for such failure. Since the said member fully participated in the hearing of the matter, and was present when the judgment was delivered, only that she did not sign the judgment, but the omission occasioned no any miscarriage of justice to the appellant. For that reason, the 1st ground of appeal is devoid of merit, hence dismissed.

Arguing the 2nd ground, Mr. Benges submitted that, the issue of jurisdiction is so fundamental and it is governed by statutes, thus cannot be presumed. He

made reference to Section 15 of the Land Disputes Courts Act Cap. 216 R: E 2019 which specifically states that the Pecuniary jurisdiction of the Ward Tribunal in all proceedings of a Civil nature relating to land shall be limited to TZS. Three million (TZS 3,000,000/=).

He went on submitting that in the matter at hand the value of the disputed land is TZS. 4,500,000/= therefore, the Ward Tribunal had no pecuniary jurisdiction as the same.

The respondent on her side submitted that, it was the duty of the appellant to state the value of the suit premises, and the value stated by the appellant in the trial tribunal was Tanzania shillings One million (TZS. 1,000,000/=).

Admittedly, the question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. Courts must therefore, as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial, and this should be done from the pleadings.

Failure to do so, there is a possibility to proceed with the trial of the case on assumption that the court has jurisdiction, and where that is done, the whole proceedings, judgment and orders thereto will end upon futility as null and void for want of jurisdiction. See **Fanuel Mantiri Ng'unda versus Herman Mantiri Ng'unda and Others** [1995] TLR 6.

In the present case, the Appellant on 04/05/2018 filed a suit in the Ward Tribunal of Karabagaine against the respondent. As per trial tribunal records, the complaint was put as follows;

"Mnamo tarehe 04/05/2018 mdai Severini Ngililea wa Kijiji cha Kitwe "A" alifungua kesi yake katika Baraza la Kata Karabagaine kwa kumlalamikia Bwana Pastory Magezi wa Kijiji Kitwe "B" kwa kosa la kuingilia eneo lisilo lake kwa kudai kuwa alinunua kwa marehemu Jones Ngililea kwa thamani ya Tshs. 1,000,000/= (Milioni moja tu)".

Since there was no Valuation Report of the disputed land concerning the current market value of the Suitland, it was very proper for the trial tribunal to admit and entertain the matter the value of the Suitland mentioned by the appellant was **TZS 1,000,000/=,** the appellant being the person instituted a suit in the said Ward Tribunal.

Section 15 of the Land Disputes Court Act Cap. 216 R: E 2019 provides that,

"Notwithstanding the provisions of Section 10 of the Ward Tribunals Act, ***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".***

Since the value stated by the Appellant in the Trial Tribunal was TZS. 1,000,000/=, the amount which did not exceed the maximum Pecuniary Jurisdiction of the Ward Tribunal, and since there was no valuation report ever tendered in the trial tribunal to ascertain the current market value of the disputed land, the trial tribunal had pecuniary jurisdiction as correctly held by the DLHT. In that premise, the 2nd ground of appeal is devoid of merit, thus bound to fail.

That arguing the 3rd and 4th grounds of appeal, Mr. Benges submitted that the appellate tribunal erred in law and fact when heard the appeal in favor of

the respondent without considering that the disputed land was owned ABAGIRI ABA KITWE CLAN, and that the sale agreement did not involve the head of the clan. He went on submitting that the head of ABAGIRI ABA KITWE CLAN is Daniel Kasigwa Kangirwa, thus there is no good title had ever passed to the respondent. He made reference to the case of **Paul Alfred and another versus Gervas Marianus** [1981] TLR 33 Where Lugakingira, J (as he then was) held that, consent to the sale of the clan land can be given by a clan head or clan heads only. He added that the consent of the spouse was also necessary. He made reference to Section 59 of the Law Marriage Act (Cap. 29 R: E 2019) and Section 161 (3) of the Land Act Cap. 113 R: E 2019.

The respondent on the other side submitted that, the appellant in this case instituted the case in his capacity as the estate administrator administering the estate of the late Jones Ngililea, thus cannot change the rule of the game at the appellate level. That had he intended to institute the suit as the representative of the clan members, then the issue of latters of administration could not have been advanced. That to sue as the estate administrator meant to protect the properties of the particular individual and not a group (clan). He further submitted that the procedure being referred by the appellant of consulting the clan head only apply in the sale of the clan land, and in this matter, in the trial tribunal, the appellant did not testify that the land in dispute is/was a clan land, and therefore, he cannot demand for the Respondent to have consulted the clan head in buying the disputed land.

From submissions of both parties, this honorable court is in agreement with Mr. Benges, learned counsel for the appellant that consent to the sale of the

clan land can be given by a clan head or clan heads only as held in the case of **Gervas Marianus** (supra), but the court is in disagreement with the learned counsel that the land in dispute in the present case is/was a clan land. The property belonged the late Jones Ngililea.

It is apparent that the appellant instituted the suit as an administrator of the estate of the late Jones Ngililea and not as the representative of the clan. The trial tribunal record revealed that the respondent purchased the said land in 1992 from Jones Ngililea (Deceased). In that premise, Jones Ngililea had good title to pass to the respondent.

Furthermore, no evidence on record that the suit land was a matrimonial property acquired by joint effort between the Jones Ngililea and his wife, and that is way no complaint ever raised by the deceased's spouse (if any) over the disposed land, therefore, the argument that consent of the spouse was necessary is baseless. Section 59 of the Law of Marriage Act Cap. 29 R: E 2019 and Section 161 (3) of the Land Act Cap. 113 R: E 2019 referred by the learned counsel for the appellant are not applicable in our case. In that premises, the 3rd and 4th grounds of appeal are bound to fail.

Coming to the last ground of appeal, Mr. Benges submitted that the appellate tribunal erred in law and fact when confirmed the decision of the trial tribunal which was given basing on hearsay evidence. He relied to the copy of judgment in Land appeal No. 92 of 2016 (arising from Karabagaine Ward Tribunal, Civil Case No. 5 of 2016) between the Pastory Magezi (respondent in this appeal) and Johansen Jones Ngililea.

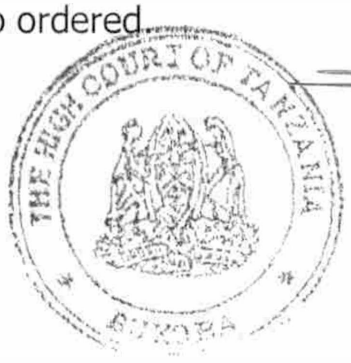
I have gone through the said copy of judgment and found that, proceedings, judgment and orders thereto were all nullified, further parties were ordered to maintain status quo. To nullify a court decision or procedure means to declare that it is not legally valid or in effective. It would also mean to reduce something to nothing. If that is the case, it is not proper for the learned counsel to refer to the nullified evidence or opinion to attack the present application.

I have carefully gone through the trial tribunal record and found that the decision was given not basing on hearsay evidence as alleged by the learned counsel for the appellant. It must be noted that, when the terms of a contract, grant or any disposition of property have been reduced to a form of a document, the document shall speak of itself and no other evidence shall be given in its proof.

The sale agreement was let by the trial tribunal to speak by itself. I have made perusal of the record and found the existence of the sale agreement between Jones Ngililea and the respondent dated 02/07/1992. The lower tribunals were very right to allow to the sale agreement to prevail.

In the final analysis, this appeal is devoid of merit. It is therefore dismissed in its entirety with costs.

It is so ordered.

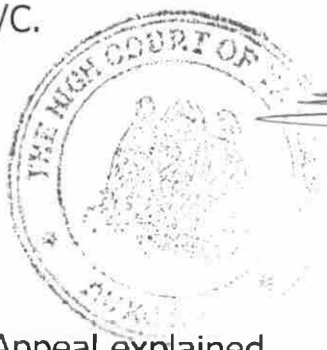


E.L. NGIGWANA

JUDGE

11/02/2022

Judgment delivered this 11th day of February, 2022 in the presence of both parties in person, Mr. E.M. Kamaleki, Judges' Law Assistant and Ms. Grace Mtoka, B/C.



E. L. NGIGWANA

JUDGE

10/02/2022

Right of Appeal explained.

E. L. NGIGWANA

JUDGE

10/02/2022