

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND CASE APPEAL NO. 78 OF 2021**

*(Arising from Appeal No. 43 of 2017 in the District Land and Housing Tribunal for Karagwe at Kayanga  
and Originating from Civil Case No. 04 of 2017 in the Igurwa Ward Tribunal)*

**SAMWEL TIBENDERANA----- APPELLANT**

**VERSUS**

**KOKUBERWA GOZIBERT----- RESPONDENT**

**JUDGMENT**

**Date of the Last Order: 17/03/2022**

**Date of Judgment: 01/04/2022**

**A.E. Mwipopo, J.**

The present appeal originates from Civil Case No. 04 of 2017 of Igurwa Ward Tribunal. The appellant herein namely Samwel Tibenderana filed a Civil Case No. 04 of 2017 at Igurwa Ward Tribunal against the respondent herein namely Kokuberwa Gozibert alleging that the respondent trespassed into the suit land. The Ward Tribunal decided in favour of the respondent. The appellant was aggrieved by the decision of trial Ward Tribunal and successfully filed Appeal No. 73 of 2017 in the District Land and Housing Tribunal for Karagwe at Kayanga. The appellate Tribunal delivered its judgment on 20<sup>th</sup> April, 2021 where it held that the

respondent proved his claims on balance of probabilities. The appellant was not satisfied with the decision of the Appellate Tribunal and filed the present appeal.

The petition of the appeal filed by the appellant contains four grounds of the appeal as provided hereunder:-

- 1. That, the District Land and Housing Tribunal for Karagwe at Kayanga erred in law in declaring the respondent to be the rightful owner of the suit land on the evidence produced before Ward Tribunal before the Ward Tribunal which was composed of three members only contrary to the law rendering the said proceedings and the orders emanating therefrom a nullity.*
- 2. That, the District Land and Housing Tribunal for Karagwe erred in law in reaching its decision in Appeal No. 73 of 2017 without aid of assessors contrary to the requirement of the law.*
- 3. That, the District Land and Housing Tribunal for Karagwe erred in law and fact in deciding in favour of the respondent who did not bring in any material evidence to establish his title over the suit land.*
- 4. That, the District Land and Housing Tribunal for Karagwe erred in law and fact in disregarding the evidence of the appellant which proved the appellant's title over the suit land on the standard of proof required in civil cases.*

In the hearing date the appellant was represented by Mr. Josephat Bitakwate, Advocate, whereas, the respondent was absent. The Court ordered hearing of the appeal to proceed in the absence of the respondent following the

appellant counsel after it was proved through endorsement of Hamlet Chairman for Kankoto "B" dated 10<sup>th</sup> March, 2022, that the respondent was duly served with summons and she signed the summons to appear for hearing of the appeal on 17<sup>th</sup> March, 2022.

The Counsel for the appellant submitted on the first ground of appeal only as he is of the view that the same could dispose of the matter. He said that the Igurwa Ward Tribunal which heard Civil Case No. 4 of 2017 was not properly composed as only 3 members of the tribunal heard the case. This is contrary to section 11 of the Land Disputes Courts Act, Cap. 216, R.E 2002. The composition of the Ward Tribunal is seen in the judgment of the said tribunal. Also, page 6 of the handwritten proceedings of the Ward Tribunal shows that only 3 members provided their opinion. The act of the Ward Tribunal to hear the case while not properly constituted makes the proceedings of the trial Tribunal to be a nullity as it was held in the case of **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, Court of Appeal of Tanzania at Tabora, (unreported).

As it was rightly submitted by the counsel for the appellant, the record of proceedings of the Igurwa Ward Tribunal show that the trial Ward Tribunal was not composed properly during trial and in its decision. I have perused the proceedings and judgment of the trial Ward Tribunal and the same revealed that the composition of the members of the trial Ward Tribunal during trial and in the

judgment was contrary to the law. The name and gender of the members of trial Ward Tribunal who composed the judgment are Philimin Albert (male), Magdalena Hieronimo (female) and Martin Daudi (male). This means that it was these three members of the trial Tribunal who composed the judgment. Also, the record of the Ward Tribunal during trial does not provide name and gender of the members of the Ward Tribunal who were present when witnesses were testifying. The Ward Tribunal's record is silent on the dates when the trial took place and there is no coram or names and gender of members of the trial Ward Tribunal who were present when the witnesses were testifying. There is nothing in the record which shows that these members of the Ward Tribunal who composed the decision were the one who heard the parties.

The relevant law which provides for the composition of the Ward Tribunal is section 11 of the Land Disputes Court Act, Cap. 216 R.E. 2002. The section provides that, I quote:-

*"11. 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 above cited provision, the Ward Tribunal is properly constituted where it consist of not less than four nor more than eight members of whom three shall be women. The section is made in mandatory terms as result the Ward Tribunal

has jurisdiction to determine the matter before it when it is properly constituted according to the law.

In the case of **Adelina Koku Anifa and Another v. Byarugaba Alex**, Civil Appeal No. 46 of 2019, Court of Appeal of Tanzania at Bukoba, (unreported), the Court held at page that:-

*"Since only three members participated in the trial of the matter subject of this appeal at the level of the Ward Tribunal, the proceedings were marred with irregularity, thus null and void. Hence, because of that ailment which we consider to be grave, we are constrained to, and we hereby quash those proceedings, as well as those in the District Land and Housing Tribunal and the High Court, and set aside the judgments in both tribunals and the High Court."*

The same position was stated by the Court of Appeal in the case of **Edward Kubingwa v. Matrida A. Pima**, (Supra), where it held at page 5 of the judgment that:-

*"It is thus, very apparent that throughout the trial it is only three members who participated and finally decided the case contrary to section 11 of the Act which require that in constituting the Ward Tribunal, the least number of members should be four members. If we may add, the other ailment in the composition of the trial Tribunal was the fact that the issue of gender was completely not observed. Of the three members who participated in the trial, none of them was a woman contrary to the mandatory requirement of the law. The failure and the irregularity by the trial Tribunal to observe the*

*mandatory requirement on the composition of the trial Tribunal, did not only vitiate the proceedings and the resulting decision of the trial Tribunal but it also rendered the trial Tribunal lack jurisdiction to try the case.”*

As it was held by the Court of appeal in the above cited cases, where the composition of trial Ward Tribunal during trial in the land case is contrary to the provision of section 11 of Cap. 216, R.E. 2002, the whole trial is vitiated and renders the trial Ward Tribunal to lack jurisdiction to try the case. In the present case, the judgment of the trial Ward Tribunal was composed of three members only as result the trial Ward Tribunal lacked jurisdiction to try the case.

Further, throughout the trial up to the judgment the Composition of the Ward Tribunal is supposed to be according to the law. The same has to be reflected in the proceedings and in the Judgment to show that it was properly constituted to hear and determine the case before it. In the case of **Anne Kisunga v. Said Mohamed, Land Appeal No. 59 of 2009**, High Court Land Division, at Dar Es Salaam, (Unreported), while discussing section 11 of the Land Disputes Courts Act held that, I quote:-

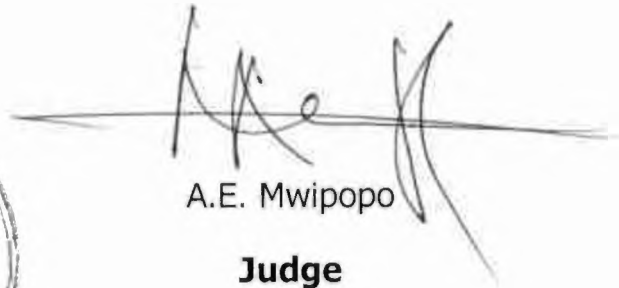
*"My interpretation of the cited law is that; the names and gender of the members participating in a case in the Ward Tribunal must be shown in order to ascertain its composition as whether it is in compliance with the law. Those members who participated during trial, their names and gender must be recorded on coram on each day the trial takes place up to the stage of judgment. Failure to follow proper procedure, it is difficult to know as in*

in the proceedings of the Ward Tribunal also vitiates the proceedings of the Ward Tribunal as the failure to meet the coram. This was stated in the case of **Francis Kazimoto V. Daglas Mkunda**, Misc. Land Appeal No. 123 of 2016, High Court Land Division, at Dar Es Salaam, (Unreported), where this Court held that-

*"In my opinion therefore, since the proceedings of the Trial Tribunal are silent on the membership composition on various dates of hearing the case, it is obvious that the judgment and proceedings under scrutiny are null and void."*

Therefore, the Court finds that the first ground of the appeal has merits. The trial Ward Tribunal was not properly composed and as a result the trial Ward Tribunal lacked jurisdiction to determine the matter. Consequently, the proceedings of Igurwa Ward Tribunal and that of the District Land and Housing tribunal for Karagwe at Kayanga are hereby quashed and the decisions thereof are set aside. Each part is at liberty to institute a fresh case before the competent District Land and Housing Tribunal according to the current laws as I'm aware of the current development in the Land Disputes Courts regime where the jurisdiction of the Ward Tribunal to hear and determine land cases was taken away. Given the circumstances of this case, I give no order as to the cost of this suit. It is so ordered accordingly.

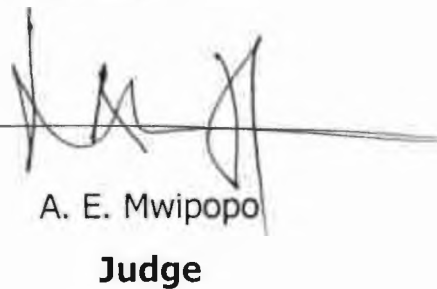


  
A.E. Mwipopo  
**Judge**

01.04.2022

The Judgment was delivered today, this 01.04.02022 in chamber under the seal of this court in the presence of the Appellant, Respondent and the counsel for the Appellant. Right of appeal explained.



  
A. E. Mwipopo  
**Judge**

01.04.2022