

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND APPEAL NO. 9 OF 2022

(Arising from Land Appeal Case No. 50 of 2019 at Muleba District Land and Housing Tribunal, Original Civil Case No. 4 of 2019 at Mushabago Ward Tribunal)

EVELINA BARNABA ----- APPELLANT

VERSUS

ANJELIKA SIMON ----- RESPONDENT

RULING

The court observed that the proceedings of the trial Ward Tribunal is silent on its composition when the said tribunal was hearing witnesses. There is no names of the member of the Ward Tribunal when the trial commenced and when witnesses were testifying. It is the judgment of the tribunal dated 19/08/2019 which shows that the members of the tribunal who composed the judgment are Filbert Numbert, Kahard Hussein, Jalia Massud and Jafes B. Alloys (chairman). As the issue of composition of the trial Ward Tribunal touched the jurisdiction of the Tribunal I ordered parties to address the court on the omission.

The appellant being a lay person said that the omission to record names and gender of the members of Ward Tribunal during trial was an error in the record of the Ward Tribunal but the members were present during hearing and those

members who heard witnesses are the one who delivered the judgment. The appellant prayed for the court to hold that the trial Ward Tribunal was properly composed and its proceedings and decision was proper according to the law.

On this side, the respondent in addressing the court said that the trial Ward Tribunal did not do justice to her as a result she appealed to the District Land and Housing Tribunal. The procedure before the trial Ward Tribunal was not proper and the court has to nullify it.

As it was stated earlier herein, the record of proceeding of the Mushabago Ward Tribunal is silent on the names and gender of the members of the Tribunal who were present when witnesses were testifying. It is in the judgment of the trial Tribunal where the names of the members of the Ward Tribunal was recorded. The said member who composed the judgment of the tribunal are Filbert Numbert, Kaharid Hussein, Jalic Massud and Jafes Alloys. The gender of the members of the trial Ward Tribunal was not shown but those names shows that 3 of the members were males and only one member was a woman. The Land Disputes Courts Act, Cap. 216 R.E. 2002 provides in section 11 the mandatory composition of the Ward Tribunal when determining Land Disputes to be not less than 4 members of whom 3 must be women. This means that the composition of the Mushabago Ward Tribunal was contrary to the said law.

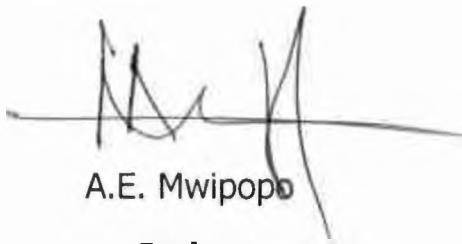
Since the composition of the Ward Tribunal when determining land disputes must be not less than 4 members and three of them must be women, the same

has to be ascertained in the proceeding if the tribunal was properly composed when it was determining this matter. In order for this court to be in position to determine the quoram of the trial Ward Tribunal the same is supposed to be reflected in the proceedings of the respective trial Tribunal. This position was stated by this court in the case of **Anna Kisunga v. Said Mohamed**, Land Appeal No. 59 of 2009, High Court Land Division, at Dar Es Salaam, (unreported); and in **Mariam Madali v. Hadija Kihamba**, Misc. Land Case Appeal No. 16 of 2019, High Court Land Division at Dar Es Salaam, (unreported).

In absence of the names and gender of the members of the Ward Tribunal it could not be ascertained whether the trial Ward Tribunal was properly composed. As a result, the said Ward Tribunal lacked jurisdiction to determine the matter before it if it could not be proved that it was properly composed. This omission vitiates the proceedings before the Mushabago Ward Tribunal. This court was of the same position 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).

Therefore, I proceed to quash the proceedings of the trial Ward Tribunal and its decision. The proceedings and decision of the District Land and Housing Tribunal are quashed also for the reason that the appeal before the appellate tribunal originated from proceedings which was a nullity. Each party is at liberty to instituted a fresh case before District Land and Housing Tribunal after following

proper procedures for mediation before Ward Tribunal according to the current laws. As the issue of jurisdiction was raised by this court, each party has to take care of its own cost. It is so ordered.

A handwritten signature in black ink, appearing to be 'A.E. Mwipopo', written over a horizontal line.

A.E. Mwipopo

Judge

23.03.2022