

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 110 OF 2021**

*(Arising from the decision the District Land and Housing Tribunal for  
Tarime in Land Appeal No. 93 of 2017)*

**BETWEEN**

**WAMBURA WANDWE ..... APPELLANT**

**VERSUS**

**MARWA WAMBURA..... RESPONDENT**

**JUDGMENT**

*31<sup>st</sup> March & 12<sup>th</sup> May, 2022.*

**A. A. MBAGWA, J.**

This is a second appeal from the District Land and Housing Tribunal for Tarime sitting as the first appellate Tribunal.

The respondent, Marwa Wambura instituted a Land Case No. 12 of 2017 before the Ward Tribunal for Baraki against the appellant, Wambura Wandwe.

The respondent was claiming ownership over the suit premises. The respondent's version was to the effect that he inherited the suit premises

from his late mother. The respondent further testified that his late mother bought the said land from Matiko Nyambeko at the consideration of a cow in 1987 and since then they have been using the land in dispute. To support his case, the respondent called other two witnesses namely, Mwitwa Saina Waryoba and Robi Marwa.

In defence, the appellant, Wambura Wandwe testified and called his father Matiko Nyambeko.

Upon hearing the evidence of both sides, the trial ward Tribunal adjudged in favour of the respondent, Marwa Wambura who was the plaintiff before the Ward Tribunal. The appellant, Wambura Wandwe was aggrieved by the Ward Tribunal's verdict hence he appealed to the District Land and Housing Tribunal for Tarime via Land Appeal No. 93 of 2017. As bad luck would have it, his appeal was unsuccessful for the DLHT upheld the decision of the trial Tribunal and consequently dismissed the appeal.

Still aggrieved, the appellant brought the instant appeal before this Court challenging both the proceedings and decisions of the two lower Tribunals.

When the matter was called on for hearing, both parties and their counsels were present. The appellant was represented by Emmanuel Werema,

learned advocate whilst the respondent enjoyed the service of Ostack Mligo, learned advocate as well.

Before going into the grounds of appeal this Court probed the learned counsel to address it on the issue of composition of the Ward Tribunal and *locus in quo*. In response, both counsel were at one that the composition of the Ward Tribunal was not proper as it contravened the dictates of section 11 of the Land Disputes Courts Act. Both counsel agreed that the section requires a minimum number of three women but in this case there were only two women who tried the matter.

Further, the counsel unanimously submitted that the decision of the Ward Tribunal indicates that the trial Tribunal visited the *locus in quo* but the proceedings do not reflect the same. The counsel thus urged the Court to quash the proceedings and set aside the judgments of the two lower Tribunals.

I have gone through the proceedings of the lower Tribunal and the submissions by the counsel of both sides. It is clear that the record of the trial Tribunal does not indicate gender of the sitting members. However,

apparently, only two members whose names look feminine namely, Honorata Chacha and Lucian Kilian.

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 is not duly constituted unless it is presided over by at least four members of whom three must be women. Thus, since the Ward Tribunal was made up of only, two women members, it goes without saying that it was improperly constituted hence the proceedings and the resultant judgment 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. See the case of **Edward Kubingwa vs Matrinda A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora.

Furthermore, the proceedings are tainted in that the record does not show whether the trial Tribunal visited the *locus in quo* whilst the judgment at

page 2 indicates that the trial Tribunal visited the *locus in quo* and took into account the findings observed at the *locus in quo*. It is a trite law that where a Tribunal visits the *locus in quo*, it should take note of whatever transpires thereat and the same should be incorporated in the proceedings. See the cases of **Nizar M. H. vs. Gulamali Fazal Janmohamed** [1980] TLR 29 and **Avit Thadeus Massawe vs. Isidory Assenga**, Civil Appeal No. 6 of 2017, CAT at Arusha. Admittedly, since the record does not reflect the proceedings at the *locus in quo*, it goes without saying that the irregularity vitiated the whole proceedings.

On all the above account, 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 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 Matirda 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 issues upon which this appeal has been determined were 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**

**12/05/2022**

**Court:** The judgment has been delivered in the presence of both appellant and respondent and their advocates Emmanuel Werema and Ostack Mligo respectively this 12<sup>th</sup> May, 2022

  
**A. A. Mbagwa**

**JUDGE**

**12/05/2022**