

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

Misc. LAND CASE APPEAL No. 80 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal No. 169 of 2019 & Originating from Bukima Ward Tribunal in
Land Dispute No. 12 of 2019)*

MISHAEL MASHAURI APPELLANT

Versus

MGETA MAOTORA RESPONDENT

JUDGMENT

07.03.2022 & 07.03.2022

Mtulya, F.H., J.:

Mr. Mgeta Maotora (the respondent) had invited the **Bukima Ward Tribunal of Musoma District in Mara Region** (the Ward Tribunal) in **Land Dispute No. 12 of 2019** (the case) to determine a dispute on ownership of land located at Bukima village in the same district and region. Following the invitation the Ward Tribunal, on 6th May 2019, a meeting was convened by the Chairman of the Ward Tribunal and both contesting parties and members of the Ward Tribunal were called to present and hear the case. Both parties in the respondent and Mr. Mishael Mashauri (the appellant) were summoned to register materials which will assist the Ward Tribunal to resolve the contest.

During the hearing proceedings and visitation of the *locus in quo* two (2) faults were committed by the Ward Tribunal, namely: first, members of the Ward Tribunal did not sign their proceedings on each day of the hearing from 6th May 2019 to 10th June 2019 to authenticate their presence and participation in the meetings. It was only the secretary alone who recorded presence of the members through writing their names; and secondly, the Ward Tribunal granted the respondent un-pleaded land size of 50 x 80 meters.

The two faults were noticed by the appellant and forwarded to the **Land Appeal No. 169 of 2019** (the land appeal) before the **District Land and Housing Tribunal for Mara at Musoma** (the District Tribunal) for rectification of the faults. In the District Tribunal, the parties were ordered to argue the land appeal by way of written submissions and all parties conceded that there are errors on face of the record and prayed for nullification of the proceedings and decision of the Ward Tribunal in favour of proper record of the lower tribunal.

The respondent on his part, prepared and filed a written submission in support of the appeal in the District Tribunal on 14th July 2020 and at page 2 of the submission, he cited the Court of Appeal authority in **Adelina Koku Anifa & Another v. Byarugaba**

Alex, Civil Appeal No. 46 of 2019, which held that proceedings marred by irregularity are null and void. Despite production of all materials presented in the land appeal, the District Tribunal declined to nullify the proceedings and decided in favour of the respondent, and reasoned at page 3 of the decision that: *sijaona kosa lolote kubwa kisheria lililofanywa na Baraza la Kata...Naona hukumu ya Baraza la Kata ilikuwa ya haki. Hivyo sioni sababu ya msingi ya kutengua uhamuzi huo.*

Following the decision of the District Tribunal, the appellant was aggrieved again and preferred second appeal in this court and filed **Misc. Land Case Appeal No. 80 of 2021** (the appeal) attached with a total of eight (8) grounds of appeal protesting both the proceedings and decisions of the lower tribunals in the dispute.

Today when the appeal was scheduled for hearing both parties invited learned counsels, Mr. Emmanuel Gervas and Mr. Godfrey Mroba for appellant and respondent respectively, to argue for the appeal. However, the dual noting are officers of this court under section 66 of the **Advocates Act** [Cap. 341 R.E. 2019] (the Advocates Act), they condensed the eight (8) grounds of appeal into two (2) which reflected the previous complaints filed in the District Tribunal and informed this court that it is obvious that the

proceedings and decisions of the two lower tribunals were tainted with irregularities, *viz.* failure to sign the proceedings and judgment on part of the members of the Ward Tribunal; and second, award of the un-claimed piece of land. To remedy the situation in such circumstances, the dual suggested nullification of proceedings and quashing of the decisions to give room for fresh and proper proceedings and decisions in the lower tribunals.

I have scanned the record of present appeal and found that the members of the ward tribunal have not registered their signature since the beginning of the dispute on 6th May 2019 to 10th June 2019 when the decision of the Ward Tribunal was rendered. The practice faulted authenticity of the proceedings and decision as it is very difficult to state on their presence and participation during the hearing of the case.

In the same course, the parties in the dispute were silent on land size and location during their statement recording in the proceedings. However, record shows that during *locus in quo*, the Ward Tribunal recorded the size of the disputed land as 48 X 105 human steps and 48 X 13 human steps, but awarded the respondent unclaimed land of 50 X 80 human steps, which is not recorded anywhere and it is not certain from where the Ward Tribunal imported the size.

It is also unfortunate that the record shows further that the land in dispute is referred as Plot 218, but without any specific size and location. This practice is against the law in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations). The Regulation has already receive a bundle of precedents (see: **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021; **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; **Daniel Dagala Kanunda v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; and **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019).

Having noted the faults, which were recorded in the Ward Tribunal and disregarded by the District Tribunal, I have decided to nullify the proceedings and quash decisions of both tribunals below for want of proper application of the laws, as I hereby do. The superior courts in our judicial hierarchy have additional duty of ensuring proper application of the laws by the courts and tribunals below and that cannot justifiably close their eyes when there are illegalities or irregularities which affect substantive justice of disputes (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). If any party is still

interested in the dispute may wish to institute fresh and proper suit in a competent forum entrusted with mandate of determining land disputes. I order no costs as the fault was caused by the Ward Tribunal and blessed by the District Tribunal, and in any case, the dual learned counsels who appeared in the present appeal acted as gentlemen. They acted as officers of this court assisting the court in arriving at justice of the parties.

Ordered accordingly.

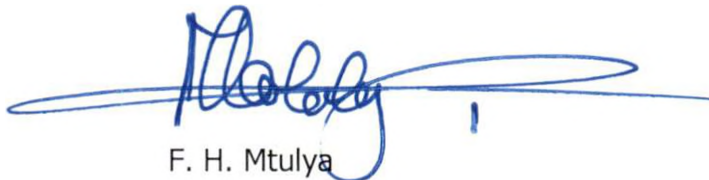



F. H. Mtulya

Judge

07.03.2022

This judgment was delivered in chambers under the seal of this court in the presence of the respondent, Mr. Mgeta Maotora and his learned counsel, Mr. Emmanuel Gervas and in the presence of the applicant's learned counsel Mr. Godfrey Mroba.


F. H. Mtulya

Judge

07.03.2022