

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND APPEAL NO. 43 OF 2021

(Arising from Appeal No. 20 of 2019 of the District Land and Housing Tribunal for Kagera at Bukoba & Originating from Civil Case No. 13 of 2018 of the Kagondo Ward Tribunal)

PUDENSAN SALVATORY BIYENGO ----- APPELLANT

(Administrator of the estate of the late Speratus Biyengo)

VERSUS

STIVIN SHAMBA----- RESPONDENT

JUDGMENT

Date of the Last Order: 31/01/2022

Date of Judgment: 11/02/2022

A.E. Mwipopo, J.

The present appeal did arise from Appeal No. 20 of 2019 of the District Land and Housing Tribunal for Kagera at Bukoba. The Respondent namely Stivin Shamba filed a Civil Cause No. 13 of 2018 at Kagondo Ward Tribunal against the Appellant namely Pudensan Salvatory Biyengo who is the administrator of the estate of the late Speratus Biyengo alleging that the Appellant has trespassed into his land. The Ward Tribunal decided in favour of the Respondent. The Appellant was aggrieved by the decision and filed Appeal No. 20 of 2019 in the District Land and Housing Tribunal for Kagera at Bukoba. The District Tribunal delivered its

judgment on 28th April, 2021 where the appeal was dismissed for wants of merits. The Appellant was once again not satisfied with the decision of the Appellate Tribunal and filed the present appeal.

The Petition of the Appeal filed by the Appellant contains three grounds of the appeal as provided hereunder:-

- 1. That, like the trial tribunal, the learned Chairman misdirected himself by holding that the Respondent had the locus standi to sue by grounding his reasons on the purported facts of the disposition inter vivos from the late Ephrazia Thomas contrary to the established principles of the law.*
- 2. That, the learned Chairman greatly misconceived the raised ground over condemning 8 other siblings of the Appellant with interests over the suitland without being heard.*
- 3. That, the first appellate tribunal erred in law for failure to quash and set aside the entire proceedings and judgment of the trial Tribunal which had a conspicuous irregularities including pecuniary, constitution of the tribunal and the trial at large.*

On the hearing date the Appellant was represented by Mr. Lameck John Erasto, Advocate, whereas, the Respondent was represented by Mr. Evance Kaiza, Advocate.

Both learned counsels submitted on all three grounds of appeal. I have decided to consider first the last ground of appeal as it is about the jurisdiction of

the Ward Tribunal to determine the matter. The learned Counsel for the Appellant submitted on their last ground of appeal that the Appellate Tribunal erred not to quash the proceedings and the judgment of the trial Ward Tribunal as there was irregularities including the pecuniary jurisdiction, composition of the trial tribunal and the trial at large. The Record of the proceedings of Kagondo Ward Tribunal does not show coram. It is settled law that the coram is important to ascertain the composition of the members of the Ward Tribunal if they are the one who heard and composed the judgment. This position was stated by this court in the case of **Tryphone Yohana v. Issa Ndetabula**, Misc. Land Appeal No. 40 of 2021, High Court Bukoba District Registry, (Unreported), at page 7. He said that in this case the composition of the members of the tribunal is found in the judgment and not in the proceedings during the hearing of the case. It is not possible to ascertain whether these members were the one who heard the witness this to be in position to compose the judgment.

The Counsel went on to submit that even the decision of the Appellate Tribunal was made without affording opportunity to the assessors to provide their opinion. The Land Disputes Courts Act, Cap. 216 in section 34 (1) provides clearly that during appeal the District Land and Housing Tribunal has to sit with not less than two assessor who have to provide their opinion before judgment according to Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing

Tribunal) Regulations G.N. No. 174 of 2003. The said opinion of the assessors must be read over to the parties as it was held in **Edina Adam Kabona v. Absolom Swebe (Sheli)**, Civil Appeal No 286 of 2017, Court of Appeal of Tanzania at Mbeya, (Unreported). The proceedings does not show at all if the assessors' opinion was read over to the parties. In his reply, the learned Counsel for the Respondent agree that the coram was not recorded by the Ward Tribunal during the hearing and he left it to the court to decide on the matter.

As it was rightly submitted by both counsels, the record of proceedings of the Kagondo Ward Tribunal does not contain the coram to show the name and gender of the members of the Ward Tribunal who heard the case. The Ward Tribunal proceedings shows that hearing of the case was conducted on 08th February, 2019 and on 13th February, 2019. It is not clear whether the members who attended the hearing on 08th February, 2019 were also the one who were present during the hearing on 13th February, 2019 as there is no coram in the proceedings. The Ward Tribunal delivered its decision on 19th February, 2019 and the decision includes the names of members of Ward Tribunal who composed it. The members who composed the decision are Kelvin P. Kamugisha who was the Chairman, Frolida Elizeus, Apronia Mbagala and Imaculatha Beatus. 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.

In this matter, 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."

The cited section above clearly states that 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. Since there are mandatory provision on the composition of the Ward Tribunal, then, the Ward Tribunal has jurisdiction to determine the matter before it when it is properly constituted according to the law.

The Composition of the Ward Tribunal is supposed 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 this case, the members who participated to composed the judgment were the same as those who appeared during trial."

The High Court was of the same position in the case of **Mariam Madali V. Hadija Kihemba**, Misc. Land Case Appeal No. 16 of 2019, High Court Land Division, at Dar Es Salaam, (Unreported), where it held that:-

"In my view, composition of the tribunal is not a mere procedural issue, it is in fact a determining factor as whether the institution that adjudicated the matter was really a Ward tribunal within the meaning of Section 11 of Cap. 216 or something else. Tribunals must ensure that they are properly constituted when adjudicating cases because failure to that reduces their status as ward tribunals to legally unknown institution."

From above cited cases, it is settled law that the members of the Ward Tribunal who participated during trial in the Ward Tribunal, their names and gender must be recorded on coram on each day the trial takes place up to the stage of judgment. The record of the Kagondo Ward Tribunal does not show the coram of the Ward Tribunal. The silence of the record of proceedings on the composition of the Members of the Ward Tribunal on the hearing dates means it is not possible to ascertain from the proceedings whether the Members of the Trial Tribunal where properly composed and they met the quorum. It cannot be ascertained if the Members of the Tribunal who heard witnesses are the one who composed the

judgment. Since the composition of the Ward Tribunal could not be ascertained in the proceedings, it could not be assumed that the Kagondo Ward Tribunal had jurisdiction to determine the land case before it. This omission in the proceedings of the Ward Tribunal has occasioned a failure of justice and they invalidate the proceedings of the Ward Tribunal. This Court was of similar 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), where it 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 this point of law raised by the Appellant has merits as 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 Kagondo Ward Tribunal and that of the District Land and Housing tribunal for Kagera at Bukoba are hereby quashed and the decisions thereof are set aside. The parties are at liberty to institute a fresh case before the competent District Land and Housing Tribunal as I'm aware that there is a change of law currently where the jurisdiction of the Ward Tribunal to hear and determine land cases was taken away. Given the circumstances of this case, I will give no order

as to the cost of this suit. As the preliminary point of law has disposed of the appeal, I'm not going to determine the Appellant's remaining grounds of appeal.



A.E. Mwipopo

Judge

11.02.2022

The Judgment was delivered today, this 11.02.2022 in chamber under the seal of this court in the presence of the Appellant, Respondent and Respondent's counsel.



A. E. Mwipopo

Judge

11.02.2022