

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

MISC. LAND APPEAL NO. 113 OF 2021

(Arising from Land Appeal No. 97 of 2020 in the District Land and Housing Tribunal for Tarime at Tarime)

BETWEEN

MBUNDE NYANGARYA.....APPELLANT

VERSUS

PHELISTER WAMBURA.....RESPONDENT

JUDGMENT

4th & 5th April, 2022

A. A. MBAGWA, J.

This is a second appeal from the District Land and Housing Tribunal for Tarime in Land Appeal No. 97 of 2020.

The appellant, Mbunde Nyangarya instituted a land dispute against the respondent, Phelister Wambura in the Ward Tribunal for Nyamagaro. The appellant and respondent are brother and sister of different mothers but share one father Nyangarya Mbunde. The dispute is over one plot and two farms allegedly the property of the late Nyangarya Mbunde.

Upon hearing of the evidence from both parties and having visited the locus in quo, the Ward Tribunal adjudged the case in favour of respondent Phelister Wambura.

Aggrieved by the Ward Tribunal's decision, the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Tarime. Still discontented, the appellant filed in this Court the instant appeal.

When the appeal was called on for hearing, the appellant was present in person and had the services of Mr. Baraka Makowe and Ms. Hellena Mabula, learned advocates. The respondent, on her part, was present, unrepresented.

At the very outset, the appellant's counsel pointed out that the lower Tribunals proceedings were fraught with fatal irregularities which suffice to dispose of the appeal without going into the merits of the appeal. Mr. Makowe submitted that the matter was heard by an improperly constituted Ward Tribunal. He said that throughout the proceedings, the trial Tribunal was not indicating the members who were in attendance. He contended that what is indicated is only dates of taking evidence. The appellant's counsel submitted that failure to indicate the quorum, it means the Ward Tribunal

was not duly constituted as this Court cannot ascertain whether the Tribunal was properly composed as per the requirement of section 11 of the Land Disputes Courts Act.

Further, the appellant's counsel highlighted that the proceedings dated 30/04/2018 show that six members visited the locus in quo namely, Sospter Mgubo, Maria Gaspa, Leonida Juma, Ester Chacha, Joyce N. Marwa and Omari G. Mwando. However, the judgment was composed by seven (7) members of the Tribunal namely, Sospter Mgubo, Maria Gaspa, Leonida Juma, Ester Chacha, Joyce N. Marwa, Omari G. Mwando and Julius Markotina. This, Mr. Makowe submitted that implies that one member Julius Markotina was involved in the decision making without having participated fully in the hearing of the case. In addition, he said that the record at the *locus in quo* does not show whether the parties were present and had opportunity to question the witnesses.

More so, Mr. Makowe told the Court that as per the record dated 16/03/2018 (complaint), the appellant, Mbunde Nyangarya was claiming a piece of land which belongs to the family of the late Nyangarya Mbunde hence he had no locus standi to institute the case.

Based on these irregularities, Mr. Makowe submitted that the whole proceedings in the Ward Tribunal and subsequent appellate proceedings were a nullity. He thus prayed the Court to nullify the proceedings and set aside judgments of the two lower Tribunals.

Respondent, being a layperson did not have much to submit. She simply told the Court that she was in agreement with the appellant's counsel.

I have gone through the submissions by both parties. I have also had occasion to appraise the record. It is true that the record does not show the quorum which sat to hear the case. What is indicated is only dates, names of witnesses and parties. To crown it all, the record does not tell which questions was asked by which member. There is only a general sentence to the effect that 'questions by members'. Admittedly, this anomaly is a clear contravention of section 11 of the Land Disputes Court Act which requires a minimum number of four (4) members. Since the record does show the quorum, this Court cannot establish whether the requisite number of members was met nor can it be assured that the issue of gender was considered. It therefore necessarily follows that the trial Tribunal was not properly constituted. Consequently, the proceedings and judgment before Nyamagaro Ward Tribunal were a nullity. Similarly, 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 Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora.

Further, I have taken time to look at the complaint which initiated the case. As submitted by Mr. Makowe, the complaint statement is clear that the complainant (the appellant) was claiming over land of Nyangarya Mbunde, his father. Without further ado, this statement denies the appellant the competence to sue. There is nowhere he said to be administrator of the estates of the late Nyangarya Mbunde nor did he claim to have been bequeathed the disputed land. As such, the appellant lacked locus standi to institute the matter hence the proceedings were incompetent before the Ward Tribunal.

Owing to the above, I nullify the proceedings and set aside the judgements of the two lower Tribunals. Since the Ward Tribunals, in terms of sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, do no longer have jurisdiction to adjudicate land matters, I decline to order a retrial. Instead, I direct that a party who still wishes to pursue the

matter, he may institute a case afresh before a Tribunal of competent jurisdiction subject to the current legal requirements.

Each party should bear its own costs.

It is so ordered.

Right of appeal is explained.



A. A. Mbagwa
A. A. Mbagwa

JUDGE

05/04/2022

Court: The judgment has been delivered in the presence of the appellant and Lule Wambura, the respondent's son on behalf of the respondent this 5th day of April, 2022.

A. A. Mbagwa
A. A. Mbagwa

JUDGE

05/04/2022