

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TANGA DISTRICT REGISTRY

AT TANGA

MISCELLANEOUS LAND CASE APPEAL NO.04 OF 2021

(Originating from Appeal No. 74 of 2019 of the District Land and Housing Tribunal for Tanga at Tanga and Land Case No. 02/2018 of Bwemбера Ward Tribunal)

KASIMU ABDALLA.....APPELLANT

VERSUS

SHABANI KIVUMBI.....RESPONDENT

Date of last order:23/03/2022

Date of judgment:25/03/2022

JUDGMENT

AGATHO, J.:

In this Appeal, the Appellant is dissatisfied with the decision of the District Land and Housing Tribunal for Tanga at Tanga in Land Appeal No. 2019 also arising from the Land Case No.2 of 2018 from the Ward Tribunal of Bwembwera situated at Muheza District.

At the Ward Tribunal, the Respondent herein instituted a case against the Appellant claiming that the Appellant had trespassed into his land that belonged to his father whom he alleged that passed away in 2008. The Appellant disputed the claim stating that he was allocated the land (farm) by the Village. During the trial, the Ward Tribunal heard both parties and their witnesses and decided the matter in favour of the

the ground that the Appellant did not have any house on the land in dispute and was never seen taking care of the same and that according to some of the witnesses brought by the Respondent participated in allocation of the land and testified that the Appellant did not possess qualifications to be the owner of the land.

The Appellant was dissatisfied with the decision of the Ward Tribunal and therefore decided to appeal to the District Land and Housing Tribunal for Tanga at Tanga. Thereat, the Respondent succeeded. This being a second appeal, the Appellant now appeals to this Court against the whole decision on the following grounds;

1. That the learned Tribunal Chairperson erred in law and in fact by reversing the Ward Tribunal decision and deciding the appeal in favour of the Respondent while there was no sufficient proof to establish the Respondent's ownership.
2. That the learned Tribunal Chairperson erred in law and in fact by ignoring the assessor's opinion that the Ward Tribunal proceedings were vitiated by material irregularities and the Appellate Tribunal should have quashed the entire proceedings and the decision of the trial Tribunal.

3. That the District Land and Housing Tribunal erred in law and in fact by completely misapprehending the substance, nature and quality of the evidence adduced by the Appellant and it misdirected itself on the same, thereby wrongly adjudging the Respondent the rightful owner of the suit land.

On the 22nd day of October 2021, the Court ordered the matter to proceed by way of written submission. In the Appeal, the Appellant is represented by Mr. Eric. A. Akaro, while the Respondent is not under legal representation.

In determining this Appeal, this Court finds it proper to begin with the second ground of appeal on the issue of material irregularities.

In his submission, the counsel for the Appellant submitted that at the Ward Tribunal, the hearing was conducted with improper quorum of members. That, the Ward Tribunal proceedings indicate that on 18/04/2018 and 02/05/2018 the quorum constituted only male members which is contrary to Section 11 of the Land Disputes Courts Act, Cap 216 R.E 2002 which provide each Ward Tribunal to consist of not less than four nor more than eight members of whom three shall be women.

The counsel therefore argued that where the Ward Tribunal is presided over by eight members, at least three shall be women but

where it is presided by less than eight members, at least one has to be a woman. Section 14(1) of the same Act, however requires that in matters of mediation the Ward Tribunal shall consist of three members at least one of whom shall be a woman.

In the case of **Twafika Nuru Chuma v Hamisi Kiuno Singa, Misc. Land Appeal No. 37 of 2020 High Court Land Division at Dar es Salaam at page 6** it was held that any decision made by a wrongly constituted Ward Land Tribunal must be declared a nullity. However, a thorough perusal of the proceedings of the Ward Tribunal, there were some females involved; one Joyce Ernest Mbwana and Fatuma Kadewele though not in the whole proceedings.

On 18/04/2018 no female member was involved though it was not a hearing date, on 02/05/2018 they were not involved but the matter was adjourned, on 24/04/2018 same female members were involved but there are no proceedings, on 23/05/2018 one female member was involved, one Fatuma Kadewele and there were five members; less than eight. One female member one Joyce Ernest Mbwana did not appear, on 20/06/2018 they were both involved and the matter, there were seven members. According to the

proceedings of the Ward Tribunal the last two dates were hearing dates.

The counsel for the Appellant added that in the records of the Ward Tribunal there were different quorums of members. In the proceedings of the Ward Tribunal on 18/04/2018 and 02/05/2018 there were five members, all were the same, on 24/04/2018 there were six members, two members did not appear on the previous two diverse dates though not hearing dates and nothing was recorded on that date, on 23/05/2018 which was a hearing date, there were five members one member, one Fatuma Kadeweile did not attend the previous dates, again on 20/06/2018 there were seven members, one Joyce Mbwana did not appear on 23/05/2018 did not appear in the previous proceeding. On the judgment date, five members appeared and only one member did not fully participate in the trial one Joyce Ernest Mbwana as she did not appear on 23/05/2018 which was a hearing date.

According to Section 4 of the Ward Tribunal Act, Cap 206 R.E 2019 the decision of the majority of members present is deemed to be the decision of the tribunal, therefore since the Ward Tribunal was composed of eight members and only one member did not fully

participate and that only one female member fully participated then that was not fatal.

Apart from that, the Court has noted that there are two judgments. There is an original copy signed by the Chairperson, Secretary and other three members signed and one member one Joyce Ernest Mbwana did not fully participate in hearing, the other judgment which is a photocopy was signed by only one member and the Secretary.

In my view such that is not fatal because the judgment is the same. The circumstance is therefore curable under Section 45 of the Land Disputes Courts Act, Cap 206 R.E 2002 since the irregularity has not occasioned a failure of justice. At that juncture this Court therefore expunge the judgment which was signed by the member and the Secretary from the records.

Regarding the issue of locus standi, the counsel for the Appellant submitted that since the Respondent instituted legal proceedings out of the deceased's estate, then that was contrary to Section 71 of the Probate and Administration Act [Cap 352 R.E 2002] which restrict a person to act as a representative after the grant of probate or letters of administration. He referred the case of **Omary Yusuph (Legal representative of the late Yusuf Haji) v**

Albert Munuo, Civil Appeal No. 12 of 2018 CAT at Dar es Salaam.

The Respondent submitted that the issue of quorum and locus standi were not raised at the trial Tribunal, as such they cannot be considered during the appeal. He referred the case of **Farida and Another v Roza Domina Kagaruki, Civil Appeal No. 103 of 2020, CAT (unreported)** where it was held that the appellate court cannot consider ordeal with issues that were not canvassed, pleaded and not raised at the lower court. According to the records, the issues were raised at the District Land and Housing Tribunal, the issues were raised, therefore this court can determine them at this stage.

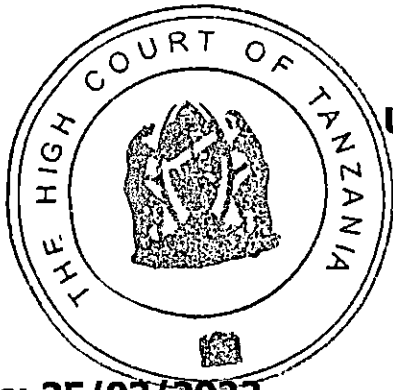
Now, regarding the position in the case of **Omary Yusuph (supra)**, that case is distinguishable as it is applicable where the administrator or the executor has already been lawfully appointed and not before the appointment. Before the appointment, any person who intermeddles with the estate of the deceased may sue and is recognised as a legal representative. This is according to Section 3 of the Civil Procedure Code [Cap 33 R.E 2019]. Regarding this position of the law, see the case of **Juma Iddi Chambo v Julius Leki, Misc. Land Case Appeal No. 12 of 2019, HCTZ at**


Tanga (unreported). From the above analysis therefore, the second ground of appeal is dismissed.

On the first and the third grounds of appeal there is no any misapprehension of evidence as alleged by the counsel for the Appellant. The District Land and Housing Tribunal properly analysed evidence from both sides and this is seen on Page 2 and 3 of the judgment of the District Land and Housing Tribunal and the evidence from the Ward Tribunal clearly established that the Respondent's father used to cultivate in the land in dispute for four years before he went to Lushoto. The farm was left under care of one Sefu Abdallah and the handing over of the farm was done. There is no sufficient evidence to prove that the Appellant acquired the land, in the circumstance I see no reason of interfering with the finding of both Tribunals. The Respondent is therefore declared the lawful owner of the land on behalf of the heirs of the late Rashid Kivumbi. The appeal is therefore dismissed with costs.

It is so ordered.

DATED at **TANGA** this 25th Day of March 2022.




U. J. AGATHO
JUDGE
25/03/2022

Date: 25/03/2022

Coram: Hon. Agatho, J

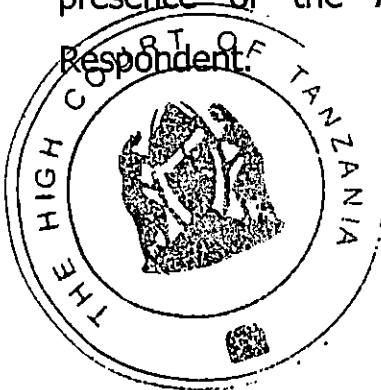
Appellant: Present with his Advocate Frida Akaro

Respondent: Present

B/C: Zayumba

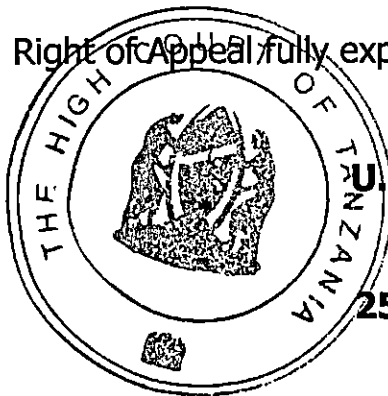
JA: Ms. Husna Mwiula

Court: Judgment delivered on this 25th day of March, 2022 in the presence of the Appellant, his Advocate Frida Akaro, and the Respondent.




U. J. AGATHO
JUDGE
25/03/2022

Court: Right of Appeal fully explained.




U. J. AGATHO
JUDGE
25/03/2022