

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

LAND CASE APPEAL NO. 27 OF 2021

*(Arising from Appeal No. 63 of 2019 at the District Land and Housing Tribunal for Kagera at Bukoba and
Originating from Civil Case No. 03 of 2019 in Kyaitoke Ward Tribunal)*

PHILBELTI ARBATI----- APPELLANT

VERSUS

AMOS SAMWEL BYABATO -----RESPONDENT

RULING

Date of Last Order: 14/03/2022

Date of Ruling: 25/03/2022

A. E. Mwipopo, J.

The appellant herein namely Philbelti Arbati was sued by Amos Samwel, the respondent herein, in Civil Case No. 03 of 2019 at Kyaitoke Ward Tribunal for trespassing. The Ward Tribunal delivered its decision in favour of the respondent. The Appellant unsuccessfully appealed to Bukoba District Land and Housing Tribunal in Appeal No. 63 of 2019 which in its judgment upheld the decision of trial Ward Tribunal. The appellant was not satisfied and filed the present appeal in this Court.

The appellant filed petition of appeal which contains four grounds of appeal as provided hereunder:-

- 1. That, the appellate tribunal erred in law to confirm the decision of the trial Ward Tribunal without considering jurisdiction aspect that the trial tribunal entertained the case which was time barred as the appellant purchased the suitland in 1985 and the respondent never established the specific time within which the cause of action arose.*
- 2. That, the appellate tribunal erred in law and fact to determine the case against the appellant as pecuniary value of the land in dispute was never ascertained by the trial tribunal thus proceeding with the case without jurisdiction.*
- 3. That, the appellate tribunal erred in law as there was no lawful assessors' opinion at the appellate tribunal to support chairman's decision.*
- 4. That, the appellate tribunal erred in law and fact for failure to certify that the appellant had strong evidence to support his claims of ownership.*

On the hearing date, the appellant was represented by Mr. Peresius Mutasingwa Advocate, whereas, the respondent appeared in person. The Court asked both parties to address the Court on the issue of composition of the District Land and Housing Tribunal which is the third ground of the appeal in petition since it touches the jurisdiction of the appellate tribunal.

The counsel for the appellant in addressing the Court said that there was irregularities in the composition of both trial and appellate Tribunals. He said that in the Ward Tribunal the record is silent on the members who attended the trial

as there is no coram to show members who attended the trial at the Ward Tribunal. It is on the judgment where the members of the Tribunal are shown. For that reason the Ward Tribunal was not properly composed.

The Counsel said that in the District Land and Housing Tribunal there are irregularities as the Tribunal was not properly composed. On the date for the assessors to provide their opinion, the said opinion does not appear to be read over to the Tribunal. Thereafter, the record shows the Chairman fixed a date for judgment. The counsel said that the handwritten submission of one of the assessor opinion said to have read submissions from both parties. But, it was the appellant who filed his submission to the tribunal as the Respondent did not file any submission. This proves that the assessor either did not provide opinion at all or just did write opinion without reading the file. Thus, the District Land and Housing Tribunal was not properly composed and its decision was not proper. He said that the whole proceeding before the Ward Tribunal and the District Land and Housing Tribunal were nullity and has to be quashed.

In his reply, the respondent being a lay person addressed the Court by saying that the members of the Ward Tribunal were present during trial. The procedures for hearing before the Ward Tribunal was proper as there was 7 members of the Ward Tribunal who heard the case. Thus, the Coram was proper as they were more than 4 members. For that reason the Ward Tribunal was

properly composed. He said in the District Land and Housing Tribunal parties were present and the assessors did provide their opinion. For that reason, the District Land and Housing Tribunal was properly composed.

After both parties addressed the Court on the composition of trial and appellate tribunals, this Court has to determine whether the said tribunals were properly composed.

To start with the composition of the Ward Tribunal, this is governed by section 11 of the Land Disputes Court Act, Cap. 216 R.E. 2002. The said 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 provides for the mandatory composition of the trial Ward Tribunal when determining land matters. 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 these are mandatory requirements 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.

In order to ascertain the composition of ward tribunal when trying a land matter, the names of the members of the tribunal has to be recorded in the proceedings of every hearing date. 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, this Court 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



A.E. Mwipopo

Judge

25/03/2022

The Ruling was delivered today, this 25.03.2022 in chamber under the seal of this court in the presence of the Appellant, respondent and the counsel for the appellant. Right of appeal explained.



A. E. Mwipopo

Judge

25/03/2022