

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND APPEAL NO. 69 OF 2022

*(Arising from Land Appeal No. 6/2021 District Land and Housing Tribunal for Bukoba Originating
from Bugandika Ward Tribunal in Land Case No. 33/2020)*

SAMWEL SIMON..... APPELLANT

VERSUS

JOSWAM JOSIA..... RESPONDENT

JUDGMENT

6th & 15th March, 2023

BANZI, J.:

At Bugandika Ward Tribunal (the trial tribunal), the Respondent sued the Appellant, his brother, claiming that the latter had encroached his land which he inherited from his father, Simon Josia. In his defence, the Appellant alleged that, the disputed land does not belong to the Respondent because it is within the road reserve and therefore, it belongs to TANROADS and he was using it only to plant seasonal crops. After hearing the parties, visiting the *locus in quo* and hearing their witnesses thereafter, the trial tribunal held that the disputed land belongs to TANROADS and it does not belong to either of the party. Each party was ordered to pay Tshs.7,000/= as the costs of adjudicating the matter.

Dissatisfied with that decision, the Respondent appealed to the District Land and Housing Tribunal for Bukoba ("the appellate tribunal") faulting the decision of the trial tribunal. The appellate tribunal decided in favour of the Respondent and declared him the rightful owner of the disputed land. It further held that, if TANROADS would claim that land, that would be another issue.

The outcome of the decision by the appellate tribunal agitated the Appellant who approached this court seeking the Court to quash that decision due to irregularities and for failure of the appellate tribunal to call a witness from TANROADS to verify if the land in question belongs to it. In his appeal to this Court, the Appellant raised three grounds which for apparent reason, I shall not reproduce them.

At the hearing of this appeal, the parties appeared in person, unrepresented. Both parties prayed to adopt their grounds of appeal and the reply thereto. The Appellant in his brief submission, contended that the disputed land is not in the road reserve therefore, does not belong to TANROADS. The Respondent on his side, argued that the disputed land is in the road reserve and it belongs to TANROADS.

However, before closing their submission, Court raised *suo moto* an issue of the propriety or otherwise of the proceedings before the trial tribunal regarding jurisdiction of the trial tribunal. Having probed to address on that

issue, the Appellant conceded that the proceeding of the trial tribunal does not reveal the names of the members who presided over the matter. He contended that, he has nothing to do with that defect because the same was committed by the tribunal. He left the matter to this Court to decide. On his part, the Respondent briefly said that, he had nothing to say on the irregularity committed by the trial tribunal.

Having examined the record and considered the arguments of both sides, the issue for determination is whether the trial tribunal was properly constituted.

It is important to underscore that, according to section 11 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] ("the Land Disputes Courts Act") the ward tribunal is duly constituted if it is composed of not less than four and not more than eight members of whom three shall be women. It is also worthwhile noting here that, in order to ascertain if the ward tribunal is properly constituted, the names of members who presided over the matter on each date must be disclosed in the proceedings. Short of that, it is an error which affect the jurisdiction of the said tribunal.

Reverting to the appeal at hand, having thoroughly examined the record of the trial tribunal, it is undisputed that, the trial tribunal was not duly constituted for want of names of members who presided over the matter. What transpired in the proceedings of the trial tribunal is that, on 6th

October, 2020, the claim was read over to the Appellant and he denied. Thereafter, hearing proceeded whereby, the Appellant and the Respondent adduced their evidence. However, the proceedings do not disclose the names of the members who constituted the tribunal on that date. That is to say, there was no coram which contains the names of members on 6th October, 2020 when the Appellant and Respondent testified before the trial tribunal. Thus, in the absence of names of members in the proceedings, it is difficult to ascertain if the persons whose names appeared in the judgment are the very ones who presided over the trial when the Appellant and the Respondent adduced their evidence.

Moreover, after hearing the evidence of parties, the tribunal ordered to visit the *locus in quo* on 6th November, 2020. On that date, the trial tribunal received the testimonies of witnesses of both parties. Once again, there is no coram showing the names of members who constituted the tribunal on that particular date. What we have is a list of attendance containing names of nineteen (19) people whereby, among them, five were introduced as members; one as secretary; one as chairman; one as former chairman; four as neighbours; two as witnesses; one 'kamanda kijiji' and the remaining three were the Appellant, Respondent and his child. It is clear from the proceedings that, at the *locus in quo*, the trial tribunal received the evidence of the witnesses for the parties in the presence of nineteen people including five members of the tribunal. However, on 29th December, 2020

when the decision was delivered, it was signed by four members. Thus, without the coram of two days of hearing, it is doubtful if the persons appeared in the judgment are the very ones who presided over the trial when the Appellant and the Respondent with their witnesses adduced their evidence.

As stated earlier, for the ward tribunal to be duly constituted, the names of the members who presided over the matter on each date should be reflected in the proceedings. Failure to adhere to that, is a fatal irregularity which cannot be served by section 45 of the Land Disputes Courts Act because the irregularity hinges on the issue jurisdiction of the tribunal. In the case of **Francis Kazimoto v. Daglas Mkunda** Misc. Land Appeal No. 123 of 2016 HC Land Division (unreported) when this Court was confronted with akin situation, it had this to say:

"The jurisdiction of the ward tribunal is only available if it is duly constituted. It would follow therefore that, the omission to reflect the names of the persons who constitute the ward tribunal during trial is an error which affects the jurisdiction of the same. It is no doubt that an incurable irregularity which vitiates the judgment and proceedings of the trial tribunal.

Basing on the above position of the law it is apparent that, both the proceedings and judgment of the trial tribunal are nullity. For that matter,

whatever transpired thereafter in the appellate tribunal has no legs to stand for being a product of nullity.

For those reasons, I invoke revisional powers conferred to this Court under section 43 (1) (b) of the Land Disputes Courts Act to nullify the proceedings, quash the judgments and set aside the orders and decree of both trial and appellate tribunals. Either party who is still interested may file a fresh suit subject to the requirements of section 13 of the Land Disputes Courts Act as amended by section 45 of the Written Laws (Miscellaneous Amendments) (No. 3) Act 2021. In the circumstances, each party shall bear its own costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
15/03/2023

Delivered this 15th day of March, 2023 in the presence of the Appellant and the Respondent both in person.



I. K. BANZI
JUDGE
15/03/2023