

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 50 OF 2022

(Arising from Misc. Land Application No. 173/2022 and Misc. Application No 131 of 2018 both at the District Land and Housing Tribunal for Tarime at Tarime and from Original land Application no 24 of 2016 at Nyahonga Ward Tribunal)

ELSA ADONJIAPPELLANT

VERSUS

KAYANDA ORIGIRESPONDENT

JUDGMENT

16th & 16th March 2023

F. H. Mahimbali, J.:

The appellant in this appeal has been aggrieved by the decision of the DLHT of Tarime in Land Appeal no 173 of 2022 which originated from the decision of Nyamongo Ward Tribunal. The appeal is mainly centred on the execution process of the Ward Tribunal's award. The preferred grounds of appeal as filed by the appellant's counsel are as follows:

- 1. That, the trial chairman erred in law and facts for failure to consider that the respondent and the tribunal broker*

exceeded the area he was granted by the trial tribunal and invaded into the applicants' land and destroyed the appellants' cassava and make demarcations within the applicants' land and annexed it despite such land was not granted to the respondent.

- 2. That, the trial chairman erred in law and facts for the failure to consider that at the trial tribunal the suit land was measured the Length of 242 footstep and the Width of 109 footsteps and it had permanent marks surrounding it including the cassava farm, hills and neighbors surrounding the suit area but the same were not observed hence the lawful order of the trial tribunal and the District Land and Housing Tribunal were violated and not observed.*
- 3. That, the trial chairman erred in law and facts for relying on the presence of the village leaders who were not in a leadership in 2016 and they had no knowledge of the suit land and demarcations made by the trial ward tribunal.*
- 4. That, the trial chairman erred in law and facts for failure to consider that the appellant was not present at the time of execution as the execution was made on Sunday in the presence of respondent, her advocate and the tribunal broker.*

When the case was set today for hearing of the appeal, Mr. Evance Njau learned counsel appeared for the appellant whereas the respondent who was duly served was absent and without any notice. Before he argued the grounds of appeal, Mr. Njau prayed to address the court on one legal

issue in respect of membership at the trial Ward Tribunal that the quorum lacked female members which is mandatory requirement as per law. Relying in section 11 of the LDCA Cap 216 and section 4 of the Ward Tribunal Act, he clarified that at every sitting of the Ward Tribunal, there shall not be less than three female members of the tribunal members. Since the requirement is mandatory, non-compliance to it, renders the proceedings and the resulting decision a nullity. In cementing his argument, he cited the case of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal no 107 of 2018 CAT at Tabora at page 5 and the case of **Malima Ndege vs Paulo Bruno**, Misc. Land Appeal No 127 of 2021, High Court Musoma (unreported).

On this submission, he invited this court to nullify all the lower tribunals' proceedings and decisions thereof as emanating from a nullity proceedings.

The respondent who was duly served but absented himself from court appearance, the court was not privileged to get his view/submissions. As there was no any notice of his absence registered before this court, I ordered the appeal to proceed as above in the absence of the respondent.

Following the legal issue raised, the grounds raised in support of the appeal are not going to be determined in this appeal. The main issue this court is going to consider is whether the trial tribunal was properly constituted as per law. It is trite law that in order for a tribunal or court to pursue matter before it, the same must be properly constituted, otherwise it lacks jurisdiction.

As per section 11 of the LDCA, cap 216 provides as follows:

*"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 under section 4 of the Ward Tribunals Act"*
[Emphasis in bold is mine]

Section 4 of the Ward Tribunal Act, Cap 206 R. E. 2022 provides that:

1. Every Tribunal shall consist of
 - a) **Not less than four nor more than eight members** elected by the Ward Committee from amongst a list of persons resident in the Ward complied in the prescribed manners;
 - b) A chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).
2. There shall be secretary of the Tribunal who shall be appointed by the local government authority in which the

Ward in question is situated, upon recommendation by the Ward Committee.

3. *The quorum at a sitting of a Tribunal shall be one half of the total number members.*

[Emphasis added]

According to the record of land case no 24 of 2016 at Nyamongo Ward Tribunal, the members who tried and determined the matter are six namely:

- 1) Silvester Okoth – Chairperson
- 2) Omwanda Obala – member
- 3) Isaya Oganga – member
- 4) Gradus Kiraryo – member
- 5) Agness Nyamang’ondi – member
- 6) Shelida Nchama – member

As per constitution of the members in this case at the trial tribunal, there were only two female members by their names: Agnes Nyamang’ondi and Shelida Nchame. Since the law demands at least three female members, then the trial tribunal was not properly constituted as per law.

In determining land case at the Ward Tribunal, the issue of gender consideration is not only legal but a mandatory legal requirement. Its non-compliance not only renders the proceedings and the resulting decision of the trial tribunal vitiated but also renders the trial tribunal lack requisite jurisdiction to try the case (see **Edward Kubingwa vs Matrida A Pima**, Civil Appeal No 107 of 2018, CAT at Tabora – at page 6-7, **Adelina Koku Anifa and Joanitha Sikudhani Anifa vs Nyarugaba Alex**, Civil Appeal No 46 of 2019).

In the circumstances of this case, guided by the position taken by the Court of Appeal in the cases of **Edward Kubingwa and Adelina Koku Amida and Another (supra)** and for what I have discussed above, I therefore quash the proceedings of the trial Tribunal as well as that of the DLHT and set aside resulting judgments and subsequent orders.

The respondent is at liberty to file his claims afresh in accordance with the current procedure and law. I make no order as to costs.



DATED at MUSOMA this 16th March 2023.


F. H. Mahimbali

Judge

Court: Judgment delivered this 16th day of March 2023, in the presence of Mr. Evance Njau, learned counsel for the appellant and Mr. Kelvin, RMA.

A handwritten signature in blue ink, appearing to read 'F. H. Mahimbali', written over a horizontal line.

F. H. Mahimbali

Judge