

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

MISCELLANEOUS LAND APPEAL NO.21 OF 2022

***(C/f Appeal No.22 of 2018 in the District Land and Housing Tribunal of
Arusha Region at Arusha, Originating from Land Complaint No.6 of 2017
at the Ward Tribunal of Kimnyak Ward)***

MEISHOORI LORAMATU..... APPELLANT

Vs

SAIGURAN LORAMATU..... RESPONDENT

JUDGMENT

Date of last order: 16-2-2023

Date of Judgment: 7-3-2023

B.K.PHILLIP,J

The appellant herein lodged this appeal challenging the judgment of the District Land and Housing Tribunal for Arusha Region at Arusha (Henceforth "The Land Tribunal") in appeal no 22 of 2018.

A brief background to this appeal is as follows. That the appellant was the respondent before the Ward Tribunal of Kimnyak ward where he was sued by respondent herein for trespassing into his land. The Ward Tribunal entered an ex-parte judgment in favor of the respondent herein and declared him the lawful owner of the disputed land. Aggrieved by the said decision of the Ward Tribunal, the appellant appealed before the Land Tribunal. His appeal did not sail through. The Land Tribunal's findings were to the effect that the appellant was not denied the right

to be heard since the Ward Tribunal's records reveal that he decided to engage an advocate contrary to the law and was accorded opportunity to be heard but refused to utilize it for no good reason. His appeal was dismissed and the judgment of the Ward Tribunal was upheld. Undaunted, the appellant lodged the instant appeal. The appellant's grounds of appeal are reproduced verbatim hereunder;

- i) *That, the 1st appellate Tribunal erred in law and in fact for not holding that the judgment of the Tribunal was illegal was signed by the secretary of the Tribunal.*
- ii) *That, the 1st appellate Tribunal erred in law and in fact for hearing and delivering a judgment while its members did not meet the quorum and the secretary was treated as the member of tribunal.*
- iii) *That, the 1st appellate Tribunal erred in law and in fact for hearing and delivering a judgment while Trial Tribunal lacked jurisdiction as the land was not described.*
- iv) *That, the 1st appellate Tribunal erred in law and in fact for hearing and delivering judgment for the respondent without enough evidence.*
- v) *That, the 1st appellate Tribunal erred in law and in fact as the proceedings of the lower Tribunal and itself were tainted with irregularities.*
- vi) *That appellant was denied his right to be heard.*

This appeal was heard viva voice. Both the appellant and respondent appeared in person. They were not represented. Submitting in support of the appeal, the appellant argued that the decision of the Ward Tribunal was signed by the secretary contrary to the law and the Ward

Tribunal was not properly constituted. He contended that he was not accorded the right to be heard and the respondent failed to describe the boundaries of the disputed land. Moreover, he pointed out that he attended at the Ward Tribunal and told the chairman of the Ward Tribunal that there was another case in respect of the disputed land that was pending for hearing before the High Court of Tanzania, Arusha registry. He requested the Ward Tribunal to stay the proceedings to await the hearing of the case that was pending at the High Court but his request was denied and hearing of the case proceeded as scheduled. In conclusion of his submission, the appellant prayed this appeal to be allowed.

In rebuttal, the respondent submitted that the appellant was notified of the hearing of the case at the Ward Tribunal but deliberately decided not to defend the case. There was no case that was pending for hearing at the High Court of Tanzania Arusha registry in respect of the disputed land.

On the issue of boundaries, the respondent submitted that he described very well the boundaries of the disputed land when the Ward Tribunal visited the disputed land and the appellant was present. Further, he added that the disputed land is adjacent to the respondent's land.

With regard to the composition of the Ward tribunal, the respondent submitted that the members of the Ward Tribunal who attended at the hearing of the case were about six. Three men and three women. In conclusion of his submission, the respondent prayed for the dismissal of this appeal.

In rejoinder, the appellant reiterated his submission in chief and insisted that the case that was pending at the High Court of Tanzania Arusha registry was in respect of the disputed land.

Having dispassionately analyzed the rival arguments made by the parties let me proceed with the determination of the merit of this appeal. I will start with the appellant's concern on the composition of the Ward Tribunal for obvious reason, that is, improper composition /lack of quorum of the ward Tribunal vitiates the proceedings of the Ward Tribunal. Section 11 of the Land Disputes Courts Act, provides for the composition of Ward Tribunal. It reads 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 for under section 4 of the Ward Tribunal Act"

It is not in dispute that the secretary is not a member of the Ward Tribunal. However, he/she is the one who takes the records of the proceedings of the Ward Tribunal. In the case of **Abdalamani Mohamed Vs Halidi Mohamed Misc. Land Case Appeal No.1 of 2019** (unreported), this court had this to say on the role of a secretary of the Ward Tribunal.

"..... The secretary is not a member of the Tribunal and does not participate in decision making ,but he records the decision made therefore his name must appear in the corum not as a member but as secretary .Skipping his name in the proceedings may attract a question as to who recorded the proceedings"

In this case, upon perusing the judgment of the Ward Tribunal I noted that the same indicates the names of all members of the Ward Tribunal

including the secretary and chairman. Each one signed against his/her name and the position/title of each one is indicated. In addition, the proceedings of the Ward Tribunal reveal that at the hearing of the case the members of the Ward Tribunal were not less than five (5) members. This is quite in compliance with the law. In short, I have not seen any irregularity in the proceedings of the Ward Tribunal because the number of members who attended at the hearing of the case and signed the judgment forms the quorum as required by the law.

With regard to the issue on whether or not the respondent described the boundaries of the disputed land, the records of the Ward Tribunal reveal that the boundaries of the disputed land were well described by the respondent. The members of the Ward Tribunal visited the disputed land and a sketch map showing the boundaries of the same was drawn. In addition, the evidence adduced by the respondent and his witnesses proved that the respondent herein is the rightful owner of the disputed land. Thus, this ground of appeal also fails for lack of merit.

Coming to the appellant's complaint that he was denied the right to be heard, it is the true that the case was decided ex-parte, but as correctly submitted by the appellant himself, the Ward Tribunal records show that the appellant was dully notified of the existence of the case and appeared before the Ward Tribunal. He prayed for the stay of the proceedings on the reason that there was another case that was pending for hearing at the High Court of Tanzania at Arusha registry in which the subject matter was the disputed land, but his prayer did not sail through. In addition to the above, the proceedings of the Ward Tribunal reveal that on 1st January 2018, when the case was called for hearing, the appellant was present and informed the Ward tribunal that

he was not ready to proceed with the hearing because he engaged an advocate to defend him. The Ward Tribunal did not accept his arguments. It proceeded with the hearing of the case ex-parte.

It is noteworthy that pursuant to the provisions of section 18 (1) of the Land Disputes Courts Act, advocates are not allowed to appear and act for a party before the Ward Tribunal. The appellant's argument that he had engaged an advocate to defend him before the Ward Tribunal was not proper in law. The Ward Tribunal cannot be faulted for proceeding with the hearing the case ex-parte because the appellant decided to sit on his right to be heard. Therefore the appellant's arguments are baseless since he was given the opportunity to be heard and refused to utilize it. He cannot be heard now claiming that he was denied the right to be heard.

In fine, this appeal has no merit. The same is hereby dismissed in its entirety with costs.

Dated this 7th day of March 2023




B.K.PHILLIP
JUDGE