

**IN THE HIGH COURT OF TANZANIA
(IN THE SUB-REGISTRY OF MWANZA)**

AT MWANZA

LAND APPEAL NO. 96 OF 2022

*(Originating from Land Appeal No.19 of 2017 in the District Land and Housing
Tribunal for Ukerewe at Ukerewe)*

MULEBO MAKARANGA.....APPELLANT

VERSUS

WILLIAM BALYEHELE KASWAHILI.....RESPONDENT

JUDGMENT

Date of Last Order: 26/03/2023

Date of Ruling: 03/04/2023

Kamana, J:

This is a second appeal in which Mulebo Makaranga, the Appellant, who was once the Respondent in Land Case No. 12 of 2016 at Kakerege Ward Tribunal, is challenging the findings of the trial Tribunal and the Ukerewe District Land and Housing Tribunal in Land Appeal No. 19 of 2017 in which he was the Appellant against William Balyehele Kaswahili.

Briefly, the Appellant was sued by the Respondent at Kakerege Ward Tribunal for trespassing on the land the latter claims to have purchased from the Appellant's aunt who goes by the name of Ndayebilwe Mulebo. It was the case of the Appellant that his aunt had

no good title to sell the piece of land as the same was owned by his late grandfather who also happened to be his aunt's father. The Appellant contended during the trial that as the elder grandson of his grandfather, the latter, before joining his ancestors, bequeathed him the land in dispute. Upon hearing the competing arguments, the trial Tribunal held in favour of the Respondent.

Aggrieved, the Appellant preferred the appeal against such a decision to the Ukerewe District Land and Housing Tribunal. In the said appeal, the appellate Tribunal concurred with the findings of the lower Tribunal and held that the disputed land is the property of the Respondent.

Following that decision, in his quest for justice, the Appellant found his way to this Court seeking to undo the decisions of the lower Tribunals. He was armed with four grounds of appeal as follows:

1. That the appellate Tribunal erred in law and fact for failure to consider that the proceedings of the trial Tribunal lack the composition of members required for the Ward Tribunal.
2. That the appellate Tribunal erred in law and fact for failure to consider that the Secretary of the Tribunal acted as a member of the Ward Tribunal contrary to the law.

3. That the appellate tribunal erred in law and fact by holding that the Appellant has no locus standi while the Respondent was the one who sued him in the Ward Tribunal.
4. That the appellate Tribunal erred in law and fact in entering judgment in favour of the Respondent without considering the fact that the judgment of the Ward Tribunal was not signed by members of the Tribunal.

When the appeal was called for hearing, the Appellant was represented by Mr. Dioniz Mwasi, learned Counsel whilst the Respondent had no legal services. The appeal was orally argued for and against.

Upon taking the floor, Mr. Mwasi, learned Counsel prefaced by abandoning the first and the fourth grounds. On the second ground, the learned Counsel contended that the appellate Tribunal erred in upholding the decision of the trial Tribunal which sat with the Secretary of the Tribunal as a member. In his opinion, that was a clear contravention of section 4(1)(a), (2) and (4) of the Ward Tribunal Act, Cap. 206 when read together with section 11 of the Land Disputes Courts Act, Cap. 206. He buttressed his argument by citing the case of **Akonaay Tsere v. Martin Qamara**, Miscellaneous Land Appeal No. 39 of 2017.

On the third ground, Mr. Mwasi, learned Counsel submitted that the appellate Tribunal erred in law for raising the issue of locus standi which was not an issue at the trial Tribunal. The learned Counsel reasoned that since the Appellant was the one who was sued at the trial Tribunal, the issue of locus standi cannot be raised against him. He fortified his arguments by referring to the case of **Madam Mary Silvanus Qorro v. Edith Donath Kweka and Another**, Civil Appeal No. 102 of 2016.

Responding, Mr. Kaswahili, the Respondent was brief. Concerning the second ground, he contended that the Secretary was listed as an attendee of the session and not as a member of the trial Tribunal. Concerning the third ground, being a layperson, Mr. Kaswahili had no useful argument.

Mr. Mwasi, learned Counsel, in his rejoinder, reiterated his submission in chief.

Starting with the first ground of the appeal, I shake hands with Mr. Mwasi, learned Counsel for the Appellant that it is trite law that the Secretary of the Ward Tribunal is not a member of the Tribunal. According to sections 4(1)(a) and (2) of the Ward Tribunal Act and section 11 of the Land Disputes Courts Act, the Secretary of the Tribunal

is not mentioned as part of the members of the Tribunal. This position was well elucidated in the case of **Akonaay Tsere v. Martin Qamara (Supra)** where this Court (Maige, J, as he then was) had this to state:

'The question that I have to resolve in the circumstance is whether a secretary of the ward tribunal is a member of the tribunal. In NADA QORI VS. ISAKI GILBA, MISCELLANEOUS LAND APPEAL NO. 2 OF 2013 (HIGH COURT ARUSHA (UNREPORTED) this court held that the secretary was not a member for the purpose of decision making. In the circumstance of this case and having read the provisions of sections 4(1) (a), (2) and (4) of the Ward Tribunal's Act, Cap. 206 (R.E, 2002) and section 11 of the Land Disputes Courts Acts Cap. 216 (R.E.2002) I subscribe to my learned sister Madame Justice Mugasha in the authority just referred that; the secretary of the ward tribunal is not among the members of the tribunal mentioned elected under section 4(1) (a) of the Ward Tribunals Act.'

Dispassionately, I have gone through the records of this appeal and found that on the unspecified date when the Tribunal sat for the first time to determine the matter, its Secretary was one Julius Mwizarubi. Further, the same Julius Mwizarubi appeared in later proceedings of 8th March as a member of the Tribunal. This contravenes the provisions of section 4(1) (a), (2) and (4) of the Ward Tribunals Act,

Cap. 206 and section 11 of the Land Disputes Courts Acts Cap. 216 as the Secretary of the Tribunal is not a member of the Tribunal.

That being the position, I find the whole proceedings at the trial nullity as the person who played the role of the Secretary played also the role of the member of the trial Tribunal. Further, since the second ground crumbles the whole proceedings, I see no reason to determine the third ground.

Invoking the revisionary powers of this Court, I quash the proceedings, judgments and orders of the trial and appellate Tribunals. I further direct that the file be remitted to the trial Tribunal for retrial. I give no order as to costs in the circumstance. It is so ordered.

Right To Appeal Explained.

DATED at **MWANZA** this 3rd day of April, 2023.



A handwritten signature in blue ink, appearing to read "KS Kamana". The signature is fluid and stylized, with a large initial "K" and a long, sweeping underline.

KS KAMANA

JUDGE