

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

MISC. LAND APPEAL NO. 3 OF 2022

*(Arising from Land Appeal No. 50/2020 of the District Land and Housing Tribunal of
Iringa before Hon. A. J. Majengo, Chairperson, Original Land Dispute No. 7/2020 of the
Kidunda Ward Tribunal.)*

PAULO MIHO	APPELLANT
VERSUS		
BOCICO MIHO	RESPONDENT

JUDGMENT

7th March & 2nd May, 2023

I.C MUGETA, J:

This is a second appeal, emanating from the Idunda Ward Tribunal. The respondent had instituted proceedings against the appellant for two reasons; **one**, selling clan land against the law and **two**, claiming a piece of land on behalf of the family of his late brother Adreas B. Miho. The Ward Tribunal decided in favour of the respondent. The appellant was discontented. He appealed to the District Land and Housing Tribunal (DLHT) where his appeal was dismissed. He has now preferred this second appeal based on the following grounds:



1. *That the learned Hon. Chairman erred both in law and fact when he failed to evaluate evidence adduced before the trial Ward Tribunal establishing that the respondent had no locus standi to sue the appellant.*
2. *That the learned Chairman erred in law and fact in upholding the decision of the trial ward tribunal despite the records showing that the trial ward tribunal was improperly constituted.*
3. *That the learned Chairman in composing judgment refused without justifiable reasons to join hands with the opinion of assessors who opined the case be remitted to the trial tribunal for trial de novo on reason of being improperly constituted.*
4. *That the learned Chairman erred both in law and fact in making a finding that the appellant did not argue on the grounds of appeal while the appeal was disposed by way of written submissions and the appellant argued on all grounds of appeal.*
5. *That the learned Chairman erred both in law and fact when he refused the appeal without justifiable reasons.*
6. *That the learned Chairman was wrong to uphold the decision of the trial ward tribunal despite the fact that the respondent expressly stated he represents the family of*

Pugeta

Adreas Miho without proving being administrator of the estate.

7. That the learned chairman failed to evaluate evidence and consider that, the appellant and his family has been living on the disputed land without any interruption from them for more than 12 years.

8. That the learned chairman failed to evaluate the weak evidence tendered by the respondent herein before the trial ward tribunal.

The hearing of the appeal was by way of filing written submissions. The appellant was duly represented by Mr. Jonas Kajiba, learned advocate whereas the respondent was represented by Mr. Edmund Mkwatta, learned advocate.

In supporting the appeal, the appellant's counsel abandoned the 5th and 6th grounds of appeal and argued jointly the 1st and 6th grounds, the 2nd and 3rd grounds, the 7th and 8th grounds and lastly the 4th ground independently.

Regarding the 1st and 6th grounds, he argued that it is settled law that whoever brings a matter in court must have sufficient interests as it was discussed in **Lujuna Shubi Balonzi v. The Registered Trustees of**

Mgeto

Chama cha Mapinduzi [1996] TLR 203 and **Josiah Balthazar Baisi & 138 Others v. Attorney General & Others** [1998] TLR 331. In his views the respondent had sued on behalf of the family of Adreas Miho but he did not tender any power of attorney or letter of administration to prove that he is the legal representative of his deceased brother. Therefore, he had sufficient interests in the matter.

On the 2nd and 3rd grounds, he argued that the ward tribunal was not properly constituted on each respective day. He argued further that section 11 of the Land Disputes Courts Act, [Cap. 216 RE 2019] provides that the ward tribunal shall consist of not less than four and not more than eight members of whom three shall be women. To cement his argument, he cited the case of **Alexander Mashauri v. Regina William**, Misc. Land Appeal No. 64 of 2020, High Court of Tanzania – Musoma where the court held that failure to observe composition of the ward tribunal vitiates the proceedings and judgment.

He argued further that the names, designation, gender and signature of each member ought to be provided to ascertain the compliance with the



law. The ward tribunal records do not show the members who were present.

On the 7th and 8th ground, the learned counsel submitted that the law is clear that a second appellate court cannot interfere with concurrent findings of two courts below unless there is misdirection of evidence as it was held in the case of **Helmina Nyoni v. Yerima Magoti**, Civil Appeal No. 61 of 2020, Court of Appeal - Tabora (unreported). He urged the court to interfere and analyze the evidence tendered in the ward tribunal as the appellant had strong evidence than the respondent as the appellant has owned the suit land for a long time. To buttress his argument, he cited the case of **Shaban Nassor v. Rajab Simba [1967] HCD 233** which held that long and undisturbed possession entitles a person to acquire ownership.

Lastly, on the 4th ground he argued that it was wrong for the DLHT to conclude that the appellant did not argue on the grounds of appeal without first ascertaining that the appellant filed his written submissions supporting the appeal on 10th March 2021 as evidenced from the record.



The respondent's counsel responded to the argument in the 1st and 6th grounds by stating that the **Josiah Balthazar** case cited by counsel for the appellant provided that locus standi can be expanded to include sufficient interest, therefore, anyone with sufficient interests may seek a remedy on behalf of others. In his view, the respondent showed the ward tribunal how he has sufficient interest as Andreasi Miho was his elder brother and the appellant his younger brother. It is his further view that the fact that the parties are siblings resulted into the issue of locus standi not being raised at the ward tribunal which is fine as the primary function of the ward tribunal is to mediate and ensure peaceful co-existence of members of the society as evidenced under section 13 of the Land Disputes Courts Act.

Submitting on the 2nd and 3rd grounds, the counsel argued that it is wrong for the appellant to think that the Chairman upheld the coram of the ward tribunal while he said nothing about it.

Lastly, on the 7th and 8th ground, he argued that the Chairman did not evaluate evidence on appeal as he was not moved to do so through submissions by the parties.

Mugeta

I will begin with the 1st and 6th grounds which are centered on *locus standi* of the respondent. For a person to have *locus standi* to sue, he has to show that his right has been directly affected by the act he is complaining about. The respondent before the ward tribunal instituted the suit on behalf of the family of his late brother and on behalf of his clan members. This is evidenced from the statement of claim which reads as follows;

"Mimi Bosko B. Miho namshitaki ndugu Pauli Miho kwa kuuza mashamba ya ukoo kinyume na sheria. Na pili namdai kiwanja cha kaka yangu marehemu Adreas B. Miho kwa niaba ya family yake-kiwanja chenye ukubwa ekari tatu".

In his evidence, the respondent did not show that he was elected by the clan members to represent them in claiming the clan land or that he is the administrator of the estate of his late brother, Adreas Miho. In the absence of all these, the respondent had no locus standi to sue the appellant.

The 2nd and 3rd grounds of appeal concern the composition of the Ward Tribunal and the chairman differing with the opinion of assessors. Section 11 of the Land Disputes Courts Act, [Cap. 216 R.E 2019] requires the tribunal to be constituted by not less than four members and not more

Mgeta

than eight members, three of them being women. The ward tribunal record is not clear on the members who sat to determine the dispute on each date. The proceedings do not show members who were present from when the matter commenced and on other sittings. Members are just reflected, when they visited *locus in quo*. It is unclear if they are the ones who sat each day and gave out the judgment. Therefore, for this uncertainty, the ward tribunal was not properly composed.

On the opinion of assessors, the appellant faults the DLHT in refusing to join hands with the opinion of assessors. Section 24 of the Cap. 216 provides that in reaching a decision, the Chairman shall take into account the opinion of the assessors but shall not be bound by it. However, he ought to give reasons in the judgment for differing with such opinion. The judgment of the DLHT shows that the Chairman differed with the opinion of assessors who opined that the coram of the Ward Tribunal was not proper and he assigned the reason. Therefore, this complaint has no merits while the complaint on the composition of the Ward Tribunal succeeds.

The complaint on the 4th ground is that the chairman erred in holding that the appellant did not argue on the grounds of appeal. The record shows

Mgeta

that the appellant's appeal before the DLHT contained nine grounds of appeal. In his judgment the chairman stated that the appellant did not submit on any ground in his petition of appeal and that became a reason to dismiss it.

With respect to the learned chairperson the appellant submitted on the grounds of appeal generally. Therefore he was duty bound to consider such grounds either generally as he did or one ground after another. Deficit in arguments is not equal to failure to argue the appeal. I find merits in this ground.

The 7th and 8th grounds centers on evaluation of evidence as the appellant believes his evidence before the trial tribunal was strong than that of the respondent. However, based on my finding that the ward tribunal was not properly composed and that the respondent had no *locus standi*, there is no need to consider the merits of the case. Failure to observe the composition of the ward tribunal vitiates the proceedings, judgment and orders of the ward tribunal as it was the position in **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018, Court of Appeal – Tabora (unreported).



I would have ordered a retrial of the case before the ward tribunal but since ward tribunals no longer have jurisdiction to adjudicate disputes arising from the Land Act and Village Land Act, I refrain from taking that course. The appeal is allowed. I give no orders to costs in this court because the disputants are relatives.




I.C MUGETA
JUDGE
02/05/2023

Court: Judgment delivered in the presence of the respondent and in the absence of the appellant.

Sgd. I.C MUGETA
JUDGE
02/05/2023