

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB – REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISCELLANEOUS LAND APPEAL NO. 48 OF 2022**

*(From the Decision of the District Land and Housing Tribunal of Tarime at Tarime in  
Land Appeal No. 56 of 2021 and Original Ward Tribunal of Nyanungu Ward in  
Application No. 19 of 2021)*

**NYAMWIBI NYANKENA MAGARYA ..... APPELLANT**

***VERSUS***

**WAISKO MACHERA CHACHA ..... RESPONDENT**

**JUDGMENT**

8<sup>th</sup> & 8<sup>th</sup> May 2023  
**F. H. Mahimbali, J.**

The appellant and the respondent quarrel for a claim of land thus commencement of a land case at the trial tribunal. Each one claims the suit land to be his/hers. The trial tribunal gave its decision in favour of the appellant. Not satisfied, the respondent successfully preferred an appeal before the DLHT. The appellant has been aggrieved by the DLHT's decision, thus the genesis of this appeal.

During the hearing of the case, the parties were not represented. Before the parties had argued their appeal, this Court had observed that the trial tribunal's proceedings being irregular on the issue of coram as the membership during hearing of the case and those making decision are not the same. In their respective submissions, parties seemed not to be at issue on this irregularity saying that they had not been any miscarriage of justice.

Whereas the appellant was the winner at the trial tribunal, the respondent was equally satisfied with what was overturned by the DLHT. Thus, each found himself being right, each one praying this Court to find what was decided in his/her favour was right.

In totality of what I have pointed out above, that the trial tribunal's proceedings were vitiated with fundamental legal error on membership coram keeping changing from one coram to another when hearing was being done. It is clear that as per proceedings of the trial tribunal which some are not dated, there were only three tribunal members selected to preside over the matter who are: **Damiana Munge, Christina Nyamosi and Philemon Mwita Chacha**. However, the judgment of the trial ward tribunal was made up of eight members, namely: **Samwel Gikaro Sawi**

**(Chairperson), Josephat Buhuru Nchangwa, Habuba Philmoni Mwita, Stephen Mwita Kimwawama, Joseph Matiko, Damiana Munge, Christina Nyamosi and Philemon Mwita Chacha.**

Hearing of any dispute is a fundamental duty which presupposes strict compliance as per law. Since ward tribunals are creatures of the law, their composition and coram is strictly as legally provided. Whereas under section 4 of the Ward Tribunal Act, the composition of the ward tribunal as per law, should not exceed 8 but not below 4. The similar composition is provided under S. 11 of the LDCA, Cap 216 which provides that 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 Tribunals Act. So, membership of each tribunal in settling any dispute should be of minimum 4 members and maximum of eight members, of whom three shall be women. So, the coram in each tribunal can either be 4 members, 5 members, 6 members, 7 members and maximum of eight members. However, once selected then it is only those members of a particular tribunal who shall maintain coram (panelists) and not others. That means, the members should not keep changing in numbers and genders from one

session to another as it has been in this case. To allow it, we might experience cases being decided by members who did not hear the case it has been the case with the present matter.

The failure and the irregularity by the trial Tribunal to observe the mandatory requirement on the composition of the trial Tribunal, did not only vitiate the proceedings and the resulting decision of the trial Tribunal but it also rendered the trial Tribunal lack jurisdiction to try the case. In an akin situation in the case of **Adelina Koku Anifa and Joanitha Sikudhani Anifa v. Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported) where the quorum of the Muhutwe Ward Tribunal was formed by only three members contrary to section 11 of the Act, the Court observed as follows:

*"Since only three members participated in the trial of the matter subject of this appeal at the level of the Ward Tribunal" the proceedings were marred with irregularity, thus null and void hence, because of that ailment which we consider to be grave, we are constrained to, and we hereby quash those proceedings, as well as those in the DLHT and the High Court, and set aside the judgments in both tribunals and the High Court. We direct for the suit to be tried anew by the tribunal."*


Guided by the position taken in the case of **Adelina Koku Anifa and Joanitha Sikudhani Anifa** (supra) and for the above given reasons, I therefore, quash the proceedings of the trial Tribunal and as well as that of the DLHT pursuant to S. 43 (1) a & b of the LDCA.

Having quashed and set aside the above stated proceedings and judgments, ordinarily and in line with the decision of the Court in **Adelina Koku Anifa, Joanitha Sikudhani Anifa** (Supra) and **Edward Kubingwa Vs. Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora (unreported) we would have directed for the suit to be heard denovo. However, in the advent of the recent amendments made to the Act by the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021, whereby the powers of the Ward Tribunals to inquire into and determine disputes arising under the Land Act and the Village Land Act and also the powers to order recovery of possession of land and other powers the Ward Tribunals used to have under sections 13 (2) and 16 (1) of the Act have been immensely stripped off by the said amendments, I find it not practicable to order the suit to be heard denovo. In these circumstances, I thus direct that the respondent, if she so wishes, may file

her claims afresh in accordance with the current procedure and law. I make no order as to costs.




DATED at MUSOMA this 8<sup>th</sup> day of May, 2023.

  
F. H. Mahimbali  
Judge

**Court:** Judgment delivered this 8<sup>th</sup> the day of May, 2023 in the presence of both parties and Kelvin Rutalemwa, RMA.

Right of appeal is explained.

  
F. H. Mahimbali  
JUDGE