

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

LAND REVISION CASE NO. 5 OF 2022

*(Arising from the Land Application No. 163 of 2022 of the District Land and Housing
Tribunal of Mara at Musoma)*

MASEKE MAKORI APPLICANT

VERSUS

CHACHA MAGWEIGA 1ST RESPONDENT

KIHENGU MAKORI 2ND RESPONDENT

RULING

18th & 25th May, 2023

M. L. Komba, J.:

In District Land and Housing Tribunal of Mara at Musoma (the Tribunal), applicant applied for revision via application no. 163 of 2022 praying the tribunal to verify whether the disputed land claimed by the 1st respondent was actually owned by the 2nd respondent and the tribunal to declare that the disputed land which was the subject of Land Application No. 08 of 2021 at the Buswahili Ward Tribunal is belonged to him.

1st respondent raised preliminary objection that application is time barred as the execution was already took place and that applicant has no cause of

action against the 1st respondent who is no more the administrator as he was discharged his duties.

Upon hearing of the Preliminary objection Hon. Chairman was satisfied that the 1st respondent, Chacha Magweiga was the administrator of the estate of the late Mzee Magweiga Kisyeri Musyomi and that the probate was closed on 29/11/2021 and the 1st respondent was discharged from his duties as an administrator in probate cause no. 02 of 2020 and that necessitated the Chairman to uphold the preliminary objection. Dissatisfied with the decision of the Hon. Chairman while knowing he is out of time to file revision of the Tribunal decision, the applicant fronted this court praying for enlargement of time so that he can file revision and prayed for the revision. Chamber summon was accompanied by the affidavit of Maseke Makori, the applicant which was responded by reply to counter affidavit of the 1st respondent.

When the application was scheduled for hearing applicant was represented by Ms. Mary Joakim, an advocate while respondents stood solo, unrepresented. Starting to roll the ball, Ms. Joakim prayed to abandon the 1st prayer which is was for extension of time after she realized that the application was within time and parallel to that she also pray to abandon

paragraph 8, 9 and 10 of affidavit and prayed this court to adopt the rest of paragraph.

It was her submission that Misc. Application No. 163 of 2022 which was decided on 29/09/2022 by the tribunal raised legal issue as seen at paragraph 12 of the affidavit on whether objection proceedings has specific time to be raised in court, on whether the Tribunal was right to hold that the 1st respondent closed the probate cause without any evidence, whether the trial tribunal has jurisdiction to question probate issues granted by primary court. She said what she believe is according to order 21 rule 57 of CPC the powers are vested to 3rd party to file objection proceedings to a suit where he was not party. The law is silent as to when the interested party may file objection proceedings and that the objection was filed by a third party who was not part to the proceedings and that he become aware only when the case is at later stages in most cases the implementation of the decree.

To boost her argument she referred to the case of **Donis Martin Minja vs. Diamond Trust Bank and others**, Misc. Commercial Application No. 398/2017, High Court Commercial division at DSM at page 7 where it cited the case of India where it was decided it was not correct to base on time on the cases involving objection proceedings. We share the CPC provision like

India and the case of **Katibu Mkuu Amani Sports Club vs. Dodo Umbwa Amboya and others** (2004), TLR 326 where CAT insisted the role of the court in objection proceedings, the court is bound to investigate the claim or objection. She insisted that the Tribunal was supposed to conduct investigation of the property.

She further submitted that the tribunal misdirected itself because in Application No. 36/2022 which was the application for execution the 2nd respondent informed the tribunal that the property does not belong to him but Hon. Chairman proceeded to allow execution which was objected on 14/06/2022 and on 16/06/2022 the case was called for the 1st time and the execution report was filed on 17/06/2022. From her submission she concluded that the execution was done while the tribunal had knowledge of objection and therefore pray under S. 43 this court to revise the decision of the Tribunal.

Ms. Joakim merged the two issues about the probate that the Tribunal interfered the probate which was administered by the Primary court and that at the time he filed land application no. 08 of 2021 at Ward Tribunal the respondent did not introduce himself as an administrator of any estate. It was her submission that it was not right for the Tribunal to involve the issue

of probate in that application and refers the case of **Ibrahim Kusaga vs. Emmanuel Mweta** (1986), TLR at 30 where the court insisted that if the property is concerning the deceased then the administrator has power to file the case on behalf of the deceased. In the case at and the 1st respondent was claiming to be administrator the estate of the late father but the title was not declared at the ward tribunal rather it was seen in execution proceedings.

Protesting application, the 1st respondent submitted that the applicant filed the objection out of time as he was already discharged his duties as an administrator of the estate of his father and the execution was done, and that the 2nd respondent was aware and he was supposed to object the listing of the said property at the primary court within 30 days when notice was issued. He insisted that he has already close the probate and the distribution was done. After decision of the Ward Tribunal he decided to file execution at the Tribunal and the 2nd respondent was ordered to evict the area. He further informed the court that applicant was aware of the case because the 2nd respondent is his brother. He prays this court to consider his submission that he was administrator and the probate is already closed.

2nd respondent informed this court that since when the matter was in ward tribunal, he informed members that the land is not his, he was ordered to summon the owner who upon appearance in the tribunal, the 1st respondent said he did not recognized that person to be the owner but the 2nd respondent. The owner then returned to his work place. After few days they decide the case on favour of the 1st respondent.

Following submission by parties, this court noticed the case originated from the ward tribunal and upon perusal to see who was the parties at ward tribunal in application no 08/2021 it was noticed some discrepancies and therefore I ordered parties to address on;

1. Whether in application No. 08 of 2021 at Buswahili Ward tribunal parties were correctly identified and recorded.
2. Whether during hearing of the case the composition of the ward tribunal was correct according to law.

1st respondent submitted that in the proceedings record shows there is 4 members; whereby there is one female and 3 men. He proceeded that there was only one female but he does not know the legal requirement. The 1st respondent contended that at the judgment of the tribunal on the 1st page

there is four names of members and stamp but there is no names of applicant neither respondent. Second respondent stated that he had nothing to say as he cannot read.

Ms. Joakim, the counsel for the applicant submitted that composition of the ward tribunal was not correct as per S. 11 of the Land Disputes Courts, Cap 216 provides that there must be not less than 4 and not more than 8. Among the four members who hear the application only one was woman who is Pendo John. The Ward tribunal composition was not correct and this render the proceeding nullity. On the issue of parties, it was her submission that the record shows (from the judgment) parties were not recorded. it is the law that judgment should state name of the court, parties, and case number. The judgment of Buswahili Ward Tribunal does not feature who was the parties and their status which is wrong. She was of the opinion that the consequence is to nullify judgement as it originates from the nullity proceedings.

After heard parties in their submission it my turn to determine whether the application is properly before this court and what are the findings after revision. Reading submission by parties, there emerge the issue of probate the PO raised by the second respondent on Application No. 163 of 2022 was

sustained on the ground that he was administering the estate of the late **Mzee Magweiga Kisyeri Musyomi**. Record of the Ward tribunal where the case started is silent over the status of the 2nd respondent who was the applicant although in his explanation he said the property belonged to his father. It was during the objection of the execution where it was said that second respondent was administrator of the estate of his late father. This prompt me to read records of the Buswahili Ward tribunal and finds that parties were not recorded. So it is not known whether applicant introduced himself as the administrator or by his name. This is fatal. Order XX Rule (6) of the Civil Procedure Code Cap 20 R. E. 2019 provides;

'6.-(1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.'

Decree is extracted from judgment and if the parties are not well recorded in the judgment then decree cannot be extracted and therefore decision becomes inexecutable. orders of the Ward Tribunal and appeal arising thereto.

Remedy for the wrongly written judgment is order of re-composition as was said in **Abubakari I. H Kilango and Another vs. The Republic** criminal appeal no. 230 of 2021 CAT at DSM. But circumstances of this case is different as even its composition is an issue.

Section 11 of Cap 216 about composition of the Ward Tribunal it provides;

'11. 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'.

Composition of tribunal which entertained the application No. 8 of 2021 which is the source of this application was not properly composed according to law. There was only one women during hearing of the case which is not correct. It is my considered opinion that failure to observe composition of the Ward Tribunal as in the matter at hand, vitiates the proceedings, judgment and orders.

Due to the wrong composition of members of the Buswähili ward tribunal, the whole proceedings are nullified and judgment is set aside. All other judgment, orders and proceedings of all lower courts and tribunals

emanating from application no. 08 of 2021 are hereby nullified as they originated from nullity proceedings.

Ordinarily the matter was supposed be retried. However, the Ward Tribunals, in terms of sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, do no longer have jurisdiction to adjudicate land matters. I thus decline to order re-composition of judgment and or retrial and instead I direct that a party who still wishes to pursue the matter is at liberty to institute a case afresh before a Tribunal of competent jurisdiction subject to the existing legal requirements. Each party should bear its own costs

Order accordingly.



M. L. Komba

Judge

25th May, 2023