

IN THE HIGH COURT OF TANZANIA

**SHINYANGA DISTRICT REGISTRY
AT SHINYANGA**

LAND APPEAL NO. 08 OF 2021

MHOJA DADAYO.....APPELLANT

VERSUS

SYLIVESTER SEBASTIAN.....RESPONDENT

[Appeal from the decision of the District Land and Housing Tribunal for
Maswa.]

(Hon. J.T. Kaare Chairman.)

dated the 5th day of August, 2021

in

Land Appeal No. 32 of 2021

JUDGMENT

12th September, 2022 & 24th May, 2023.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal for Maswa, originating from the Land Application No. 1 of 2021 Nyashimo Ward Tribunal. The story behind this appeal in a nut shell is that, the respondent (**SYLIVESTER SEBASTIAN**) had instituted a land case, Application No. 1 of 2021 against the appellant (**MHOJA DADAYO**) at Nyashimo Ward Tribunal. In that case the respondent stated to have

rented his house plus house properties to the appellant who then defaulted to pay his rent.

In return, the appellant admitted to have been rented the respondent's house plus its properties (housewares) therein, but he added that, later on he entered into an agreement with the respondent to purchase the said housewares, the contract which was actually executed according to the appellant.

The case was heard, at the conclusion of it, on the 1st day of June, 2021, the trial tribunal found out that, the default in rent payment as well as a contract to buy the inhouse properties, were not proved, hence ordered the appellant to vacate the suit house and leave the housewares for the Respondent.

Aggrieved with that decision, the appellant herein appealed to the District Land and Housing Tribunal for Maswa. Among the findings by the Appellate Tribunal was that the trial tribunal was wrong for conducting a trial without proper quorum. It faulted the trial Tribunal for making the Secretary of the tribunal forming part of the quorum, the act which it declared to be wrong.

Though the Chairman for the appellate tribunal agreed to that raised fault, yet he went ahead confirming the ward tribunal's decision giving the

reason that, ordering retrial would amount to allowing the trial tribunal to entertain the agreement issue, the matter which is beyond its jurisdiction.

Further aggrieved with that decision, the appellant appealed to this court with a single ground of appeal that, it was wrong for the appellate tribunal to pass judgment and orders in favor of the respondent even after discovering that the said judgment of the of the ward tribunal was illegal.

On 25th April, 2022 the matter was scheduled for hearing through written submissions. Both parties complied with.

In support of his appeal, the appellant submitted to the effect that, after the Chairman had admitted that the trial tribunal tried the case without proper quorum, he ought to have nullified, quash and set aside the proceedings, judgment and orders made therefrom. He went ahead contending that, the Secretary being a member of the tribunal means that, he had a chance to influence decision by voting, which he said is wrong. To bolster his assertion, he cited the case of **Edward Kubingwa vs. Matrida A. Pima, Civil Appeal No. 107 of 2018 CAT** (unreported).

In his reply, the respondent agreed with the raised issue that making the tribunal secretary being among the members in the tribunal's quorum is wrong, yet he was of the views that, what has been done is not his fault, but fault of the tribunal. On that account, he prayed that he

should not be punished for the tribunal's fault. To buttress his assertion, he cited the case of **Thomas Steven vs. Abraham Mathew, Misc. Civil Application No. 43 of 2017, HC** (unreported).

In rejoinder the appellant reiterated what he had submitted in his submissions in chief. He further added that, the prevailing fault is against the law and that the same goes to the root of the case, thus vitiated proceedings and decision thereof. He thus distinguished the cited case of **Thomas Steven (supra)**.

That was the end of both parties' submissions.

I went through both tribunals' records and taken into consideration the parties' submissions. The issue for determination is, much as the appellate tribunal found out that the trial tribunal tried the case without proper quorum, whether it was right for it not to nullify, quash and set aside the proceedings, decision and its resultant orders thereof.

Before I venture into that issue, in my perusal on the trial tribunal's case file I have found that, save for only the day when the judgment was delivered which is 1st June, 2021, from the date that the case had started, that is 12th March, 2021, there is nowhere the trial tribunal's quorum was

written. This alone proves that, throughout all those days when trial was conducted, the trial tribunal set without a proper quorum.

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 the requirements of section 11 of The Land Disputes Courts 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."

From the above excerpt, our issue is openly answered that, after the appellate tribunal found out that there was a defect in the trial tribunal's quorum, it ought to have nullified, quash and set aside its

proceedings, decision and resultant orders thereof. As the appellate tribunal did not do so, I hereby nullify, quash and set aside proceedings, decision and resultant orders thereof for both tribunals.

However, in the advent of the recent amendments made to the Land Disputes Courts Act through the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021, whereby the powers of the Ward Tribunals have been immensely stripped off by the said amendments, I find it not practicable to order the suit to be heard *denovo*. The Ward Tribunals remained with the duty to settle the land disputes amicably.

Regarding these circumstances, I hereby direct the respondent, if he so wishes, to file his claims afresh in accordance with the current procedural laws particularly on the issue of jurisdiction. In upshot the appeal is dismissed to that extent. No order as to costs.



S.M. KULITA
JUDGE
24/05/2023

DATED at Shinyanga this 24th day of May, 2023.



S.M. KULITA
JUDGE
24/05/2023