

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

MISCELLANEOUS LAND APPEAL NO. 108 OF 2021

*(Arising from the decision of the District Land & Housing Tribunal for
Tarime at Tarime in Land Appeal No. 34 of 2020)*

BETWEEN

GABRIEL SANGATATI APPELLANT

Versus

JOSEPHAT CHACHA NYAWAMBURA RESPONDENT

JUDGMENT

A. A. MBAGWA, J.

This is a second appeal by the appellant, Gabriel Sangatati after the first appeal was dismissed by the District Land and Housing Tribunal (the DLHT) for Tarime, vide Land Appeal No. 34 of 2020 for reasons of non-joinder of the parties. The appellant, aggrieved by the findings and decision of the trial tribunal, he filed this appeal.

A brief factual background to the appeal as gleaned from the record may be recounted as follows. In 2019, before the Gwitiryo Ward Tribunal, the appellant sued the respondent via Civil Case No. 09 of 2019, claiming ownership of a parcel of land of approximately 1.5 acres situated at Gwitiryo

within Tarime District. The appellant told the Ward Tribunal that the suit land belongs to him since 1978 as he was allocated the same by the Village Council hence, he is the lawful owner of the said suit land.

To the contrary, the respondent denied the appellant's claims and further contended that he bought the said land from the appellant's father, one Samwel Mduka. According to the respondent, the said land was disposed of by way of sale to the other three persons fourteen (14) years ago, before the institution of the suit at the Ward Tribunal. Therefore, in the view of the respondent, he is currently no longer the lawful owner of the said land after been sold to the other three persons. According to the respondent, the current lawful owner of the suit land is Chacha Chinama, who was neither a party at the Ward Tribunal nor at the DLHT. Having heard the evidence from both parties, the trial Ward Tribunal entered judgment in favor of the respondent.

Dissatisfied with the trial Tribunal's decision, the appellant unsuccessfully appealed to the District Land and Housing Tribunal (DLHT) hence the present appeal.

The DLHT, after hearing the appeal, found that the respondent has currently no better title over the said land and therefore dismissed the appeal for non-joinder of the parties.

Still aggrieved with the decision of the appellate Tribunal (DLHT), lodged a petition of appeal containing three grounds, namely:

1. That the appellant Tribunal erred on point of law to find that a matter fails for non -joinder of the party.
2. That the appellate Tribunal erred on point of law when it failed to reassess and re- evaluate evidence on its own to come to a conclusion that determine the interest of the parties fullest.
3. That the appellate Tribunal misdirected itself to bank on technical aspects in violation of the National Land Policy.

The appeal was disposed of by way of written submissions whereby Ms. Helena Mabula, learned advocate represented the appellant, while the respondent appeared in person.

It was Ms. Mabula's submission that the Tribunal was wrong to dismiss the suit on the ground of non-joinder of the party without any sufficient evidence to prove the existence of non-joinder of parties. In view of the

learned advocate, there was no evidence produced to show that the respondent is no longer the lawful owner of the said land.

In addition, the appellant's counsel raised a new ground to the effect that one member of the Ward Tribunal, Simoni Marwa, did not participate fully in the hearing of the matter but he took part in decision making. Ms Mabula elaborated that the said member never heard the evidence of the complainant, nor did he hear the evidence of the respondent witness. It was the learned advocate's view that the adjudicator who does not hear the whole evidence cannot give a decision based on that evidence.

In reply, the respondent submitted the appellant did not prove his ownership of the land in dispute. He maintained that the appellate Tribunal was right in finding that the matter failed for non-joinder.

Submitting on the ground of a member who did not participate fully in the hearing of the matter, the respondent lamented that the ground was a new issue which was not raised at the first appellate Tribunal. The respondent was insistent that the second appellate court cannot entertain matters which were not raised before the trial court or the first appellate court. To bolster his argument, the respondent cited the cases of **Ramadhani Msangi vs**

Sunna G. Mandara & 2 Others, Land Appeal No. 39 of 2017 and **Farida and Another vs Domina Kagaruki**, Civil Appeal No. 136 of 2006 CAT.

Finally, the respondent beseeched the court to dismiss the appeal.

Having gone through the rival submissions by both parties and the record of the trial Ward Tribunal and DLHT, it is my considered opinion that this appeal may be sufficiently disposed of on the ground touching the composition of the trial Tribunal. It is a trite law that matters not raised in the first appeal cannot be raised and entertained in the second appeal. However, there is an exception in respect of matters of law. In the case **Elijah Bariki vs the Republic, Criminal Appeal No.321 of 2016, CAT at Arusha**, the Court held;

'We are in agreement with Mr. Mwinuka that this Court may not decide on matters that were not first put before the High Court for determination, and the rationale is that this Court only sits on appeals against decisions arising from the High Court or from Magistrates' courts in their extended powers, and this is in accordance with Sections 5 and 6 of the Appellate Jurisdiction Act, Cap 141 RE 2002. We however hasten to add that this principle does not apply when the matter involves a point of law.'

The issue relating to composition of the trial Tribunal is a purely a point of law as touches the jurisdiction of the decision-making body. As such, this

court, though sitting as second appellate body, is enjoined to entertain and adjudicate on it.

I have carefully scanned the trial Tribunal record. It is clear that on 12/12/2019 when Gabriel Sangatiti Getari and Costantine Marwa Gibore gave their testimonies, Simon Marwa was not present. Moreso, on 23/01/2020 when Martinus Ngoro Nyamboha testified again Simon Marwa was not present. Despite his absence in two occasions highlighted above, he still participated in making decision as exhibited through the Tribunal's decision dated 30th January, 2020. This implies that Simon Marwa was involved in decision making without participating fully in the hearing of the case. According to the position of law, such anomaly is fatal and vitiates the proceedings and the resultant decisions. This position is reinforced by a number of decisions of the Court of Appeal including **Seif Khamis Seif vs Nassor Mohamed Ebrahim**, Civil Appeal No. 99 of 2021, CAT at Zanzibar, **John Masweta vs. General Manager MIC (T) Ltd**, Civil Appeal No. 113 of 2015 and **Mariam Ally Ponda vs Kherry Kissinger Hassan** [1983] TLR 2.

In the case of **Seif Khamis Seif** (supra), the Court of Appeal held that it was not proper to involve in decision making an assessor who did not

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participate fully in the hearing of the case. Although the case of **Seif Khamis Seif** was discussing the assessor of the Land Tribunal in Zanzibar, the same had a similar role to the member of the Ward Tribunal.

On all the above account, I allow the appeal and consequently nullify the proceedings and set aside the judgements of the two lower Tribunals.

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 a 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.

It is so ordered.

Right of appeal is explained.




A. A. Mbagwa

JUDGE

08/06/2022