

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

**IN THE DISTRICT REGISTRY OF BUKOBA**

**AT BUKOBA**

**MISC. LAND APPEAL NO. 6 OF 2023**

*(Arising from Misc. Land Appeal No. 3/2022 District Land and Housing Tribunal for Karagwe Originating from Civil Case No. 209/2019 Rugera Ward Tribunal)*

**JOACHIM JOHN BITAMALE..... APPELLANT**

**VERSUS**

**NURIATH ADAM..... RESPONDENT**

**JUDGMENT**

~~5<sup>th</sup> and 20<sup>th</sup> June, 2023~~

**BANZI, J.:**

The appellant and the respondent are fighting over a piece of land located at Kilaguju, Nyarugando village which the appellant claimed to buy from Maria John Nzaramba in 2014 while the respondent claimed to purchase it with her late husband from Paskazia in 2000. After hearing the parties with their witnesses and visiting the *locus in quo*, the trial tribunal decided in favour of the respondent by declaring her as lawful owner of the disputed land. Dissatisfied with that decision, the appellant appealed to the District Land and Housing Tribunal for Karagwe (“the appellate tribunal”) faulting the decision of the trial tribunal. The appellate tribunal decided in favour of the respondent and dismissed the appeal with costs. Still aggrieved, the

appellant knocked the doors of this court by filing petition of appeal containing three grounds.

At the hearing of this appeal, the appellant was represented by Mr. Samwel Kiura, learned counsel while the respondent enjoyed the services of Mr. Samwel Angelo, learned counsel. Mr. Kiura prayed to argue the first ground only which challenged the jurisdiction of the trial tribunal.

Submitting on that ground, Mr. Kiura contended that, the trial tribunal had no jurisdiction because the presiding members were not revealed ~~anywhere~~ in the proceedings. The matter was heard on 12/09/2019, 26/09/2019, 10/10/2019 and 24/10/2019 but in all four days, the names of members who presided over were not disclosed. It is until on judgment day when the members were revealed namely X. Mjungu as chairman, A. Andrew, F. Mufuruki and V. Onesmo as members. Under the prevailed circumstances, it is unknown if these members were the same one who presided over the matter from the beginning to the end and if among them, there was female member. This is against the dictates of law under section 11 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] ("the Land Disputes Courts Act"). This is fatal irregularity as it was of **Francis Kazimoto v. Daglas Mkunda**, Misc. Land Appeal No. 123 of 2016 HC Land Division

(unreported). Thus, everything at the trial court and subsequent appeal is a nullity.

Upon being probed by court to address if the irregularity is curable under section 45 of the Land Disputes Courts Act in the light of the cases of **Yakobo Magoiga Gichere v. Peninah Yusuph** (Civil Appeal No. 55 of 2017) [2018] TZCA 222 and **Zahara Mingi v. Athuman Mangapi** (Civil Appeal No. 279 of 2020) [2023] TZCA 212, Mr Kiura submitted that, both cases are distinguishable with the matter at hand. According to him, in the case of **Zahara Mingi**, these were several sittings and the names of members were disclosed in three consecutive dates but in our case, in all four sittings, there was no disclosure of names of members except on the date of judgment which shows four names by initials. He further argued that, on the date they visited the *locus in quo*, there is a list of persons who attended but none among the members whose names are in the judgment appears in that list. He insisted that, the irregularity affected the jurisdiction of the ward tribunal and it occasioned miscarriage of justice because it is not known if the persons who heard the matter were the very ones who composed the decision.

In reply, Mr. Angelo submitted that, in the case of **Zahara Mingi**, the Court of Appeal emphasised on substantive justice in light of duty of ward

tribunals indicated under section 13 of the Land Disputes Courts Act. He added that, the issue of non-disclosure of names of members in whole proceedings is not fatal considering that, counsel for the appellant did not explain in details how it affected the rights of his client. Although the proceedings did not reveal participation of members through asking questions but this irregularity did not occasion failure of justice as the ward tribunals are not bound by technicalities. To him, failure to disclose the names of members in the whole proceedings is a mere technicality which does not vitiate the proceedings and judgment. Hence, he prayed for this appeal to be dismissed with costs for want of merit.

In his rejoinder, Mr. Kiura reiterated his stance that, the ward tribunal was not properly constituted for want of disclosure of names of members and this omission is not minor as it goes to the root of the matter. He added that, in the case of **Zahara Mingi**, the Court justified the issue before it by explaining how members participated by asking questions which is different with our case at hand where there is no member who participated. It was further his contention that, in two cited cases, there was minor irregularity like name of chairperson in one of the dates and names of members in some dates which is different with the matter at hand. Moreover, he argued that, it is the position of the law that, overriding objective does not apply on matters of jurisdiction. He concluded by stating that, the irregularity

prejudiced the appellant because it is not known if the ones who heard the matter were the same who made the decision. He therefore prayed for appeal to be allowed with costs by nullifying the proceedings of the trial tribunal and quashing both judgments.

Having examined the records of two tribunals and considered the arguments of both sides, the issue for determination is whether the trial tribunal was properly constituted.

It is important to underscore that, according to section 11 of the Land Disputes Courts Act, ~~the ward tribunal is duly constituted if it is composed of~~ not less than four and not more than eight members of whom three shall be women. It is also worthwhile noting here that, in order to ascertain if the ward tribunal is properly constituted, the names of members who presided over the matter must be disclosed in the proceedings.

Reverting to the appeal at hand, having thoroughly examined the record of the trial tribunal, it is undisputed that, from the beginning to the end, the names of members who presided over the matter were not disclosed at all. As correctly pointed out by learned counsel for the appellant, the case before the trial tribunal was heard on 12/09/2019, 26/09/2019, 10/10/2019 and 24/10/2019. However, in either date, the names of members who presided over were not disclosed at all. It is until on the date

of judgment when the members emerged. These were X. Mjungu as chairman, A. Andrew, F. Mufuruki and V. Onesmo as members. Even with this disclosure, it is not known if among them, there is at least one woman. Worse enough, on the 10/10/2019 when the tribunal visited locus in quo, there is a list of twenty names who attended but as rightly stated by learned counsel for the appellant, the names X. Mjungu, A. Andrew, F. Mufuruki and V. Onesmo are not amongst the attendees in the list. In this situation, it is difficult to ascertain if the persons whose names appeared in the decision are the very ones who presided over the trial when the appellant, the respondent and their witnesses adduced their evidence.

I am very much aware of the position of the law as settled in the cases of **Yakobo Magoiga Gichere v. Peninah Yusuph** (*supra*) and **Zahara Mingi v. Athuman Mangapi** (*supra*). However, the circumstances in those cases are different with the case at hand. In the former case the issue was failure to identify the member who presided over the proceedings when the Chairman was absent. On this, the Court ruled that, such irregularity did not occasion any failure of justice. In the latter case of Zahara Mingi the situation was also different. At page 8 of the judgment, it was stated that:

*"...when hearing began on 26<sup>th</sup> July, 2016 four members were recorded in attendance namely HABIBA KANJINULA, HAMISI LIGANGA, HAMISA MHANGAMWELU and ISSA*

*MASASI according to the law. Hence properly constituted for the hearing to proceed. At page 22 of the record, it is shown that on 31<sup>st</sup> August, 2016 the following members HABIBA KANJINULA, HAMISA MHANGAMWELU, HAMISI LIGANGA, ISSA MASASI and ASUMINI MGWALU were in attendance when the trial Tribunal visited the disputed land where witnesses for both parties adduced evidence concerning the disputed land, the acres of land involved and neighbours bordering the said area."*

At page 9 the Court went on and stated that:


*~~"In the light of the above cited provision, the~~  
**composition of the Ward Tribunal at all times during hearing was not less than four members and not more than eight. We find that the trial Tribunal was properly constituted as explained.** The appellant raised in her written submission that the mandatory coram was lacking and the presiding members present on 05/08/2016, 12/08/2016 and 19/08/2016 were not disclosed. As gleaned from pages 7 to 19 of the record of appeal, **though the coram is missing, the proceedings reflects that the presiding members were present because they asked the witnesses questions.** Among the members, specifically Asumini Mgwalu as complained by the appellant, visited the disputed land, and her attendance was recorded on 20/08/2016. She participated in the trial, hence present on the date of verdict."* (Emphasis is mine).

It is apparent from the extract above that, in that case in two consecutive dates, the names of members were disclosed. Equally, on the dates when the members were not disclosed, the proceedings reflected their presence because witnesses were questioned. But the situation in our case was completely different because aside their missing names, their presence did not feature anywhere in the entire proceedings as there is no any single question asked by them to all witnesses. In that regard, it is my considered view that, the two cases are distinguishable. It is also my finding that, in the particular circumstance of this case, the omission is fatal and cannot be rescued by section 45 of the Land Disputes Courts Act because it affects jurisdiction of the tribunal as it is not known if the tribunal was properly constituted in the ambit of section 11 of the Land Disputes Courts Act and section 4 (1) (a) of the Ward Tribunal Act [Cap. 206 R.E. 2002] which require not less than four members and not more than eight members. Thus, with due respect to learned counsel for the respondent, this irregularity in our case is not a mere technicality because it goes to the issue of jurisdiction. On that basis, both the proceedings and decision of the trial tribunal are nullity. For that matter, whatever transpired thereafter in the appellate tribunal has no legs to stand for being a product of nullity.

For those reasons, I find the appeal with merit and I hereby allow it. As a result, I invoke revisional powers under section 43 (1) (b) of the Land



Disputes Courts Act to nullify the proceedings, quash the judgments and set aside the orders and decree of both trial and appellate tribunals. Either party who is still interested may file a fresh suit subject to the requirements of section 13 of the Land Disputes Courts Act as amended by section 45 of the Written Laws (Miscellaneous Amendments) (No. 3) Act 2021. In the circumstances, each party shall bear its own costs.



**I. K. BANZI**  
**JUDGE**  
**20/06/2023**

Delivered this 20<sup>th</sup> day of June, 2023 in the presence of the appellant and respondent in person and Mr. Samwel Kiura, learned counsel for the appellant also holding brief of Mr. Samwel Angelo, learned counsel for the respondent. Right of appeal duly explained.



**I. K. BANZI**  
**JUDGE**  
**20/06/2023**