

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

MISC. LAND APPEAL NO. 01 OF 2023

(Arising from Kagera District Land Housing Tribunal in Land Appeal No. 33 of 2021, originating from Kyamulaile Ward Tribunal Civil Case No. 5 of 2020)

ABDUSWAMADU JOHN (*Administrator of the Estate of the Late John Kyamulaile*) APPLICANT

VERSUS

SILAS JOHN 1ST RESPONDENT
TALAZIAS JOHN 2ND RESPONDENT
ABDUMAJID JOHN 3RD RESPONDENT
ZAWADI JOHN 4TH RESPONDENT

JUDGEMENT

K. T. R. MTEULE, J.

07th June 2023 & 16th June 2023

The appellant **ABDUSWAMADU JOHN** is challenging the decision issued by the District Land and Housing Tribunal of Kagera (DLHT) in **Land Appeal No. 33 of 2021** issued on 14th September 2022 originating from the Ward Tribunal of Kymulaile in **Case No. 5 of 2020**. The Respondent, being administrator of the estate of the late John Kyakwishuku, sued the respondents claiming the suit land to belong to the decease. He alleged that, by false pretense, the land was taken by the respondents who colluded to sell it. On the other hand the respondents claimed to have inherited the land after being distributed to them by his uncle as beneficiaries of the property which belonged to their deceased father since 2003.



In the ward tribunal, the Respondents were declared to be the rightful owners of the suit land, having found them to have inherited it after being distributed to them as beneficiaries of the estate by their uncle named Jonathan Kagaruki. The decision of the Ward Tribunal aggrieved the appellant, who appealed to the DLHT. The DLHT upheld the decision of the Ward Tribunal. Being aggrieved by both decisions in the lower tribunals, the Appellant preferred the present appeal with five (5) grounds as follows; -

- i. That, the appellate tribunal grossly erred in law in disregarding the power of administrator in her findings.
- ii. That, the appellate tribunal grossly erred in law by sustaining the decision of the trial tribunal which blessed the distribution of the estates of the late John Kyakwishuku by the person who had no legal mandate to act as the administrator of the estates of the late John Kyakwishuku against the powers of the appellant.
- iii. That, the appellate tribunal grossly erred in law for failure to decide on the grounds of appeal raised by the appellant.
- iv. That, the appellate tribunal entered an illegal decision as it failed to consider the legal issue that the trial tribunal was not legally constituted at all the time when the case was called for hearing.

Due to non-appearance of the 1st, 2nd and 3rd respondents, the court ordered for the appeal to proceed ex parte against them. On hearing of the appeal, the appellant was represented by Mr. Pereus Mutasingwa, learned advocate, whereas the respondents were represented by 3rd respondent.

In his submissions Mr. Mutasingwa raised his concern asserting irregularities in the decision of the Wardtribunal and that of the DLHT.

Mr. Mutasingwa submitted that he noted that both tribunals were not legally constituted.

Starting with the Ward Tribunal of Kyamulaile, Mr. Mutasingwa submitted that the matter started with hearing on 01/09/2020 and proceeded through 06/10/2020, but the members of the Tribunal were not there, as they don't appear in the proceedings.

He added that on 02/02/2021 still members were not there but the matter proceeded with hearing and visitation to a locus in quo was done and 12 members appeared to have been in that visitation but not appearing on the quorum as it does not show among the people in the visitation who were the Tribunal members. In his view, the ward Tribunal of Kyamulaire which heard the matter on first instance was not properly constituted.

According to Mr. Mutasingwa, **Section 11 of the Land Disputes Courts Act Cap 216 of 2012 R.E**, requires the Ward Tribunals to be constituted by not less than 4 members and not more than 8 and among them, women must be 3. He submitted that having no list of members in the Ward Tribunal proceedings affected the entire proceedings from when it started from the Ward Tribunal and even at the appeal. He thus prayed for the entire proceedings of Kyamulaire Ward Tribunal to be nullified and equally the proceedings of the District Land and Housing Tribunal of Bukoba which heard the appeal to be nullified because it stood without any legal support. In bolstering his position, he cited the case of **Philbert Albert vs. Amos Samwel Byabato, Land Case Appeal No. 27 of 2021, HC, Bukoba at Bukoba** where at page 5 Hon. Mwipopo quoted the Case of **Anne Kisunga vs. Said Mohamed, Land Appeal No. 59 of 2009 HC. Land Division Dar es Salaam** where in interpreting **S. 11 of Cap 216** stated that names and gender of the members must be

recorded and failure of which vitiate the trial and that the list of participating tribunal members must be recorded every day.

Mr. Mutasingwa added that from what transpired, the entire proceedings and judgment of the Ward Tribunal and that of the DLHT are not based on appropriate legal foundation. He therefore prayed for the Court to nullify the proceedings and judgment of both Tribunals.

Mr. Mutaswingwa further insisted that even the DLHT was not properly constituted because there is no assessor's opinion in the proceedings and that there was a change of the chairman without explanation. According to him, it started with Ara Mtei but it was finalized by P. J. Makwandi. It is not indicated when they exchanged and how Makwandi came in and why. In his view, such irregularities affect the validity of the proceeding. Supporting the effect of such shortfall, he referred this Court to the case of **Deusedith Sylivesry vs. Jovenary Kalambo (Administrator of Estate of the late Sylvery Kayungi & Another, Land Case Appeal No. 7 of 2022** where at page 4 the Hon. Judge quoted the Court of Appeal case of **MS George Centre Ltd vs. The Attorney General and Another**, Civil Appeal No. 25 of 2016 which held that integrity of judicial proceedings needs transparency and lack of it may lead compromise to the justice. He thus prayed for this Court to nullify the proceedings with no costs.

In reply the third respondent submitted that, all members of the tribunal were intact. He stated that at the time of hearing all members were there although they are not educated as to how it should be composed. He contended that what surprised him was that the appellant was removed from administering the estate of the deceased and he was satisfied.

From the parties' submissions and the trial court record, this Court is called upon to determine **whether the appeal has merits.**

The appellant's Counsel argued only ground No. 4 concerning illegality he asserts to have tainted the decision of the Ward tribunal for having been not properly constituted. To ascertain whether the asserted illegality actually exists, I had to go through the records of both tribunals. Starting with record of the Ward Tribunal, which was the basis of the DHLT findings, it is true that the list of members is not indicated in the quorums. On 1/9/2020 when the matter was called for the first time, 4 members were recorded to be in attendance, but it was not indicated who was a female and who was a male. Thereafter, the matter was adjourned to 8th September 2020 and then to 24th September 2020, 6th October 2020 and 2 February 2021. In all these dates, the list of members in attendance was not indicated. In **Philbert Albert vs. Amos Samwel Byabato** cited supra by the counsel for Appellant, the constitution of the ward tribunal must be properly recorded in every hearing. It was stated at page 5 of the judgment:-

"In order to ascertain the composition, the Ward Tribunal when trying a land matter, the names of the members of the tribunal must be recorded in the proceedings of every hearing date."

I agree with the appellant's counsel that, failure to record the names and the gender of the members who participated in the ward tribunal constitutes a serious irregularity which renders the tribunal's proceedings to be a nullity. If the quorum is not shown, it is as if the tribunal was not there pursuant to **Section 11 supra**. This being the case, the proceedings of the Ward tribunal must be nullified.



Consequently, the proceedings of the DLHT which are founded on a nullity proceeding, equally becomes a nullity. Ground No 4, therefore has merits.

Since parties did not argue the other grounds of appeal, and since the issue of irregularity of the proceedings can sufficiently dispose of this appeal, then there is no need to go through other grounds of appeal.

In the circumstances, I hereby nullify the decision of the DHLT which was based on irregular proceedings and that of the Ward Tribunal for being founded on improperly constituted tribunal. The judgments and consequential orders arising from both tribunals are hereby quashed as set aside. The appeal is therefore allowed. It is so ordered.

Dated at Bukoba this 16th day of June 2023.



KATARINA REVOCATI MTEULE

JUDGE

16/06/2023

Court:

Judgment delivered this 16th Day of June 2023 in the presence of the appellant and the 3rd Respondent and in the absence of all other the respondents.



KATARINA REVOCATI MTEULE

JUDGE

16/06/2023

