

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

AT MOROGORO

LAND APPEAL NO. 138 OF 2022

(Arising from Land Appeal No. 356 of 2019 District Land and Housing Tribunal for Kilombero/Malinyi at Ifakara, Originating from Mchombe Ward Tribunal in Land Dispute No. 75 of 2019)

EDINA MANYINYI APPELLANT

VERSUS

DONATI O. SWALA..... RESPONDENT

JUDGMENT

Hearing date on: 27/7/2023

Judgement date on: 31/7/2023

NGWEMBE, J:

This is a second leg of appeal after the first appeal been unsuccessful by dismissing the appeal while upholding the decision of the trial tribunal. The District Land and Housing Tribunal for Kilombero/Malinyi at Ifakara determined Land Appeal No. 356 of 2019 by upholding the decision of Ward tribunal. Its judgement was delivered on 14/9/2020. The appellant was dissatisfied, thus she appealed to this house of justice as a second bit of appeal.

Upon careful perusal to the records of both trial tribunal and first appellate tribunal, I have observed the genesis of this dispute originated from interference on cultivation of farm land. The disputants are neighbours in their farm land. Undisputedly, both found that farm land way back to year 2003 when they were given a virgin land by the village land committee. That each one paid the village a total of TZS. 3,000/= only for allocation of that farm land. In the process, the respondent Donati O. Swala together with Raymond Manyinyi (father of the appellant and husband of Denisia Kushura, Petronia Chilumika and Onesia Makeka among others were in the same journey of being allocated farm land by the Village land committee. Since then to 2017, they performed their farm activities harmoniously. The respondent owned three acres of land while the appellant's family owned 9 ½ acres of land. However, upon demise of Raymond Manyinyi on 19/6/2017 triggered a tug of war over their neighbour Donati O. Swala over the same farm land which they farmed peacefully for more than fourteen (14) years.

The turning point of their neighbour relationship was the death of in Raymond Manyinyi, thus another marathon in the corridors of tribunals and courts commenced. Since then to date parties are on courts of law.

Another important fact which I have noticed in the course of seeking the source of dispute is the powers of the appellant as a daughter of the deceased Raymond Manyinyi. The record of the trial tribunal speaks louder, that the one who was sued at the trial tribunal was Denisia Kushula – wife of the deceased Raymond Manyinyi, acting as an administratrix of the deceased estate. The records of the trial tribunal dated 18th July, 2019 it is recorded as quote hereunder: -

"Mimi Denisia Kushula naomba kumkabidhi mtoto wangu Edina Manyinyi mwendelezo wa Kesi kati yangu mimi na Donath Swala kwa kuwa kiafya sipo vizuri na kwa sasa nipo kwenye matibabu"

To my understanding, that date was the turning point upon which the appellant came into this suit as a party. Be it as it may, the true party to the suit or an administratrix of the deceased estate (Raymond Manyinyi) surrendered this case to her daughter before the trial tribunal. Therefore, this point cannot be an issue capable of being questioned by the appellant in this house of justice.

Having that background in mind, unfortunate in this appeal the respondent did not appear, even after being summoned several times. At last, the appellant advertised the appeal in Mwananchi News Papers of 23rd March, 2023. Even after all those efforts, yet the respondent did not turn up. Hence on the hearing date, the appellant's advocates Nchimbi and Ntebe prayed to proceed with appeal ex-parte against the respondent. This court after being satisfied with all efforts made by this court and the appellant to call the respondent in court, I proceeded to grant the prayer. Thus, this appeal was heard in absentia of the respondent.

All said, the appellant raised four grounds of appeal, but on the hearing, advocate Ntebe abandoned grounds 2 and 3 and proceeded to argue ground 1 and 4. The two grounds are related to proper constitution or coram of the trial tribunal as well as suing a wrong party. These two grounds were also raised and unsuccessfully argued before the first appellate tribunal. Being dissatisfied, again advocate Ntebe raised and argued the same in this court. Much as I would agree with the learned advocate that coram of any tribunal or court is fundamental. Countless

precedents have insisted on same, including Land Appeal No. 42 of 2020 between **Simon Bunzali Vs. Joseph Malyengete & 3 others; Misc. Land Application No. 64 of 2020 between Alexander Mashauri Vs. Regina William.** These two cases were decided by this court, but the principle is the same that composition of the ward tribunal is not a mere procedural matter but substantive law which must be complied with. Failure to have proper composition, the decision of the ward tribunal shall become nullity. We need not to over emphasize on this point, because it is statutory and this court is mandated to provide proper legal interpretation.

However, the question is whether this rule of law is applicable in this appeal. To answer this question, the record of the trial tribunal indicates clearly that throughout of the proceedings, the tribunal was sitting with four members comprising three men and a woman forming an aggregate of four members. In fact, the issue of coram before the ward tribunal is governed by section 11 of the Land Disputes Courts Act, which section is quoted hereunder: -

*"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"*

For clarity, section 4 of the Ward Tribunals Act is also quoted hereunder: -

(1) *"Every Tribunal shall consist of: -*

(a) *Not less than four nor more than eight other members elected by the Ward Committee from amongst a list of*

names of persons resident in the ward complied in the prescribed manner"

(2) *(omitted)*

(3) *The quorum at a sitting of a Tribunal shall be one half of the total number of members.*

The requirement of quorum was also emphasized by the Court of Appeal in the case of **Edward Kubingwa Vs. Matrida A. Pima, Civil Appeal No. 107 of 2018**. The record of Ward tribunal defeats totally the argument advanced by the learned advocate. The record is clear like a brightest day light unincumbered by clouds, that throughout the trial of the dispute, members were four (4), three men and one woman, that was the minimum quorum capable of hearing any dispute related to land matters. I am convinced to believe that the learned advocate, while knowing the statutory position in respect of quorum of the Ward Tribunal, yet argued it as a ground of appeal.

While reserving my energy for other useful legal matters, this ground must be dismissed forthwith for lack of merits.

I now shift to the second fourth ground related to suing a wrong party. In this ground, the learned advocate Ntebe, stood firm that from the beginning the respondent sued a wrong party. The respondent ought to sue the administratrix of the deceased estate of Raymond Manyinyi who is one Denisia Kushula and a surviving wife the deceased. Proceeded to argue that parties are bound by their pleadings which is a famous rule of pleadings which no one should forget it. Added that suing a stranger is legally wrong. Justified her argument by insisting that suing the appellant

who is a mere heir of the deceased father instead of the administratrix is wrong.

As I have narrated the background of this dispute, from the outset, this ground is misplaced and embarrassing not only to the court but also to the appellant and the learned advocate. The reason is clear, the record left no iota of doubt, that the one who was sued at the Ward Tribunal was Denisia Kushula, wife of the deceased Raymond Manyinyi and who demonstrated to be an administratrix, which fact is argued by the learned advocate.

The change of names was prayed by Denisia Kushula before the Ward Tribunal as I quoted above. In respect to this ground of appeal, this court is surprised how can the appellant complain against her own making? This ground has remained me on a long-established principles of land law that the court will only grant protection to a person who has subsisting right over the suit land. The principle is quoted hereunder for ease of reference: -


The protection of the Court can only be granted or extended to the person who has valid, subsisting right over land.

The question for decision by this court, is whether the appellant deserves any right over the suit land? I think commonsense, logic, law and justice, do not support the appellant to deserve any right over the suit land. Accordingly, the decision of the both the Ward Tribunal which was upheld by the District Land and Housing Tribunal was well founded, conceived, and rightly decided. I therefore, find no convincing reason to depart from the concurrent decisions of those two tribunals.

In totality and for the reasons above, this appeal lacks merits, I therefore proceed to uphold the decision of the Ward tribunal as well as of the District Land and Housing Tribunal, and dismiss this appeal for lack of merits. Since the respondent did not appear in this appeal, I reserve an order for costs, otherwise, costs ought to be granted.


I accordingly order.

Court: Judgement delivered in chambers this 31st day of July, 2023

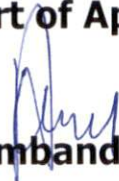
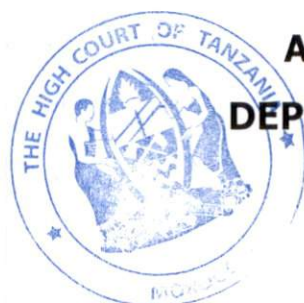


P.J. NGWEMBE
JUDGE
31/7/2023

Court: Judgement delivered at Morogoro in Chambers on this 31th day of July, 2023 in the absence of both sides.


A.W. Mmbando
DEPUTY REGISTRAR
31/07/2023

Court: Right to appeal to the Court of Appeal explained.



A.W. Mmbando
DEPUTY REGISTRAR
31/07/2023