

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

LAND REVISION NO. 07 OF 2023

(Arising from the District Land and Housing Tribunal of Mwanza in Land Appeal No. 1 of 2013; originating from Land Case No. 17 of 2012 of Mwamanyili Ward Tribunal)

BUHINU NG'WAJE.....APPLICANT

VERSUS

KEPHULENI LUBIMBI.....1ST RESPONDENT
ELIAS CHARLES.....2ND RESPONDENT

RULING

31st August & 08th September 2023

Kilekamajenga, J.

In 2012, the first respondent filed a case against the second respondent in the Ward Tribunal of Mwamanyili claiming for her land. The first respondent who has been an indigenous resident of Mwamanyili village was mystified by the invasion of her land which she owned without interference since her young age. On the other hand, the second respondent alleged to have purchased four acres from one Muhangwa and later sold seven acres to the appellant. The Ward Tribunal decided in favour of the second respondent prompting an appeal by the first respondent to the District Land and Housing Tribunal at Mwanza vide Land Appeal No. 1 of 2013. The first appellate tribunal reversed the decision of the Ward Tribunal by deciding in favour of the first respondent. On 26th August 2019, the appellant filed Miscellaneous Application No. 1C of 2019 in the District Land and Housing Tribunal objecting the attachment of the land in dispute. The



application yielded the decision in favour of the appellant impelling an appeal to this court through Land Revision No. 9 of 2020. This court decided in favour of the first respondent and went further nullifying and setting aside the decision in Miscellaneous Application No. 1C of 2019. Thereafter, the appellant sought an extension of time to revise the decision of the District Land and Housing Tribunal in Land Appeal No. 1 of 2013. This court enlarged time for the appellant to file the intended revision. Therefore, this court is now moved to call and examine the records of the District Land and Housing Tribunal in Land Appeal No. 1 of 2013.

However, after perusal of the records, I noticed an illegality in the proceedings and decision of the Ward Tribunal; that, the decision was delivered by only two members namely Mary Malimi and Flora Kamuga; and signed by only one member. Based on this blatant illegality, I invited the parties to address the court. Mr. Paul Kipeja for the appellant was hasty to refer the court to the proper composition of the Ward Tribunal as per sections 4(3) of the Ward Tribunal and section 11 of the Land Disputes Courts Act. He also joined hand with my observation that the law was violated. He urged the court to nullify the proceedings and decision of the Ward Tribunal and that of the District Land and Housing Tribunal and leave the matter for any interested person to file a fresh suit before the competent forum.

Mr. Elias Hezron for the first respondent concurred with the submission made by the appellant's counsel. He however invited the application of section 45 of the Land Disputes Courts Act, Cap. 216 RE 2019 and prayed to reserve the decision of the District Land and Housing Tribunal on the reason that the illegality did not occasion failure of justice. He supported the argument with the case of **Yakobo Magoiga Gichele v. Penina Yusuph**, Civil Appeal No. 55 of 2017. On his part, the second respondent had no any objection to the submissions above.

In the rejoinder, the counsel for the appellant stressed that the law was violated and the Ward Tribunal was not full constituted leading to miscarriage of justice. He prayed for the nullification of the decision of trial tribunal and that of the District Land and Housing Tribunal.

The major issue in this case is whether or not the trial tribunal was full constituted. Section 11 of the Ward Tribunals Act, Cap. 206 RE 2002 provides for the composition of the Ward Tribunal that:

"4(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 compiled in the prescribed manner;*
- (b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).*

(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.

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

(4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote."

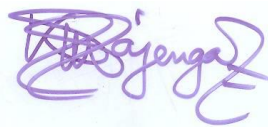
Furthermore, section 11 of the Land Disputes Courts Act, Cap. 216 RE 2019 further emphasis on the proper composition of the Ward Tribunal that:

"11. 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."

I further emphasize that, for the Ward Tribunal to be fully constituted, it must be presided by a chairman together with other members making a coram of at least four members in every sitting. Though the full coram of the Ward Tribunal is the maximum of eight members, the minimum number of members required for every sitting is not less than four members. However, the secretary of the tribunal is not a member. Therefore, whenever the Ward Tribunal convenes, at least the coram of at least four members must feature in the proceedings and they must sign the judgment. In the case at hand, the coram does not feature in the proceeding and only two names of members appear in the judgment.

Despite the fact that the coram is missing in the proceedings, it is doubtful whether the decision thereof was the product of all members. When I juxtapose the above provisions of the law and the proceedings of the tribunal, the trial of the case was conducted before an un-constituted body. The composition of the trial tribunal violated the law and the proceedings and decision thereof are a nullity. I hereby allow the appeal, quash the proceedings and set aside the decision of the Ward Tribunal. As the proceedings and decision of the District Land and Housing Tribunal are founded on the nullity decision and proceedings, I also nullify them. The matter is left for any interested person to file a fresh suit before a competent tribunal. No order as to costs. Order accordingly.

DATED at **Mwanza** this 08th day of September, 2023.



Ntemi N. Kilekamajenga
JUDGE
08/09/2023



Court:

Ruling delivered this 08th September 2023 in the presence of advocate Elias Hezron for the first respondent and advocate Irene Peter holding brief for advocate Paul Kipeja for the applicant. The applicant and the respondents were absent. Right of appeal explained.



Ntemi N. Kilekamajenga

JUDGE

08/09/2023

