

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(MOROGORO SUB-REGISTRY)**  
**AT MOROGORO**

**LAND APPEAL NO. 110 OF 2022**

*(Arising from Land Appeal No. 22 of 2021, in the District Land and Housing Tribunal for Kilosa, at Morogoro, Originating from the Mkwatani Ward Tribunal in Land Case No. 5 of 2020).*

**HAWA ALLY MKANA AND ANOTHER .....APPELLANT**

**VERSUS**

**HASSAN SWEDI..... RESPONDENT**

**JUDGEMENT**

25<sup>th</sup> Sept, 2023

CHABA. J.

On 19<sup>th</sup> June 2019, the respondent instituted a land case against the appellant at the Mkwatani Ward Tribunal claiming for ownership of both a plot of land and a farm located at the Mkwatani area in Kilosa. Having heard the case on merits, the Mkwatani Ward Tribunal adjudicated the matter in favour of the respondent declaring him a lawful owner of a parcel of land in dispute.

Dissatisfied with that decision, the appellant filed an appeal to the District Land and Housing Tribunal for Kilosa against the respondent. After the culmination of hearing of the appeal, the first Appellate Tribunal upheld the decision of the trial Ward Tribunal, hence this second appeal which is based on the following grounds:

1. That, the Honorable Chairman of the District Land and Housing Tribunal having failed to properly examine, evaluate, and analyze the gravity and weight of the evidence on record.
2. That, the Honorable Chairman of the District Land and Housing Tribunal erred in law and in fact for not considering that HAWA ALLY is an administrator of estates of the late ALLY MOHAMMED MKANA and the disputed land is among of the deceased estates even no any division has been made on such deceased estates.
3. That, the Honorable Chairman of the District Land and Housing Tribunal erred in law and in facts for not considering that the Respondent preliminary objection before Kilosa Urban Primary Court over Ally Mohammed Mkana estates was rejected due to the fact that, the disputed land belongs to Ally Mohammed Mkana (deceased) and not Halima Ally Mkana (deceased).
4. That, the Honorable Chairman of District Land and Housing, Tribunal erred in law and facts for not taking into consideration the District Tribunal's assessors' opinion.
5. That, the Honourable Chairman of District Land and Housing Tribunal erred in law and facts for not taking into consideration that Halima Ally Mkana (deceased) did not own the disputed land, but the disputed land was owned by his father Ally Mohamed Mkana (deceased).
6. That, the Honourable Chairperson of the District Land and Housing Tribunal erred in law and fact for issuing defective judgment.

On the date this appeal was placed before me for hearing, both parties appeared in persons, and unrepresented. The hearing of the appeal was done orally. However, for reasons to be apparent soon, I shall not reproduce the submissions of the parties herein.

It is trite law that, the second Appellate Court should not disturb the concurrent findings on facts by the lower Courts unless there is a misdirection of the law. **[See: Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A. H. Jariwalla t/a Zanzibar Hotel (1980) TLR 31 and Fatuma Ally Vs. Ally Shabani, Civil Appeal No. 103 of 2009 (CAT), just to mention a few]**. Thus, in determining the instant appeal, I will be guided by the above precedents so as to reach to a fair and just decision.

In the course of composing this judgment, before embarking into determination of the merits of the instant appeal, I had to go through the lower tribunal records so as to satisfy myself as to whether there was any misappropriation or misdirection of the law in the proceedings of the lower Tribunal. My perusal of the Court's records has led to me into discovery of a serious irregularity committed by the trial Ward Tribunal as regards to its composition.

Times without number, this Court has emphasized that, the records of the Ward Tribunal should be self-explanatory as regard to the members who sat to adjudicate / determine the dispute. For instance, in the case of **Amelesiana**



**Kalyila Vs. Caristo Kalipesa Kilapi**, Misc. Land Case Appeal, No. 21 of 2018, at Sumbawanga (unreported) at page 8, this Court held as follows:

"The records of the Ward Tribunal should be self-explanatory as regard to the members who sat in that session to hear evidence and determine the dispute."

Similarly, for the purpose of ascertaining the compliance of the provision of Section 11 of the Land Disputes Courts Act, [CAP. 216 R. E. 2019], it has now and then been emphasized that, the names and gender of the members participating in a case in the Ward Tribunal must be clearly shown in the corum of the Tribunal as underlined by this Court in the case of **Juma Mohamed Salum Vs. Sophia Selemani**, Misc. Land Appeal No. 92 of 2009, (unreported) on page 2 where it was held that: -

"The omission of indicating the names of the members and their signatures contravenes the mandatory requirements of Section 11 read together with section 14 (1) of the Land Disputes Court Act."

The Court of Appeal of Tanzania in **Edward Kubingwa Vs. Matrida A. Pima**, Civil Appeal No. 107 of 2018, in amplifying section 11 of the Land Disputes Courts Act (supra) and section 4 of The Ward Tribunals Act, [CAP. 206 R. E. 2002] observed as follows:

"My interpretation of the cited law is that: the names and gender of the members participating in a case in ward tribunal must be shown in order to ascertain its composition as whether it is in compliance with the law. Those members who participated during trial, their names and gender must be recorded on coram on each day the trial takes place up to the stage of judgment. Failure to follow proper procedure, it is difficult to know as in this case, the members who participated to compose the judgment were the same as those who appeared during trial."

In the end, the Court held:

"The failure and the irregularity by the Tribunal to observe the mandatory requirement on the composition of the trial Tribunal did not only vitiate the proceedings and the resulting decisions of the trial Tribunal but it also rendered the trial Tribunal lack jurisdiction to try the case".

Reverting back to the matter at hand, it is crystal clear that the records of the Mkwatani Ward Tribunal does not show the names, gender, and signatures of the members who heard the matter from the first day of sitting to the judgment, an omission which is fatal.

In the premises, and without further delay, I hasten to allow the appeal and proceed to quash and set aside the proceedings, Judgment, Decree and all

orders stemming from the Mkwatani Ward Tribunal in Land Case No. 5 of 2020 for want of proper composition of the Trial Tribunal. Further to that, the proceedings and Judgment of the District Land and Housing Tribunal for Kilosa, at Kilosa which blessed the decision of the improperly composed trial Ward Tribunal are also declared a nullity for a reason that, they emanated from a nullity proceedings, Judgment and Decree as well.

Being alive to the amendment of section 13 (2) and 16 (1) of the Land Disputes Courts Act (supra), brought by section 45 of the Written Laws (Miscellaneous Amendment) (No. 3) Act No. 5 of 2021, which reduced the powers of the Ward Tribunal from adjudication to merely mediation of land disputes before it, I will not order the matter to be tried de-novo. Instead, I have therefore decided to let it to any of the parties, if so wish, to prefer a fresh and proper land dispute in accordance with the current laws and procedures regulating land disputes in a competent forum authorised to resolve land disputes with no order as to costs. It is so ordered.

**DATED at MOROGORO** this 26<sup>th</sup> day of September, 2023.



  
M. J. Chaba

**JUDGE**

**26/09/2023**

**Court:**

Judgement delivered this 26<sup>th</sup> September, 2023, in the absence of both parties.



  
A. W. Mmbando

**Deputy Registrar**

**26/09/2023**

**Court:**

Right of Appeal to the parties fully explained.



  
A. W. Mmbando

**Deputy Registrar**

**26/09/2023**