

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**MOSHI DISTRICT REGISTRY**  
**AT MOSHI**

**LAND CASE APPEAL NO. 13 OF 2022**

*(Appeal from a decision of District Land and Housing Tribunal of Moshi District at Moshi dated 13<sup>th</sup> day of September, 2022 in Land Application No. 76 of 2018 and originated from decision of Bomang'ombe Ward Land Tribunal in Shauri la Ardhi No. 02 of 2018 dated 3<sup>rd</sup> September 2018)*

**ABDALLAH MSERI ..... APPELLANT**

***VERSUS***

**JULIUS MKWABI ..... RESPONDENT**

**JUDGMENT**

16<sup>th</sup> October & 5<sup>th</sup> December, 2023

**A.P.KILIMI, J.:**

This is a second appeal by the appellant, Abdallah Mseri after being aggrieved by the decision of the District Land and Housing Tribunal dated 13<sup>th</sup> September, 2022 in Land Appeal No. 76 of 2018, in which the decision of the Boma Ng'ombe Ward Tribunal in Application No. 02 of 2018 dated 3<sup>rd</sup> September, 2018, of which he had lost, was upheld.

At Bomang'ombe Ward Tribunal the appellant had sued the respondent for trespassing on what he claimed to be his land and built a fence. He claimed that the respondent had uprooted his trees on the other hand the respondent had disputed the allegations and by saying that he only cleared

his plot and built a fence but left a space where he was shown a boundary. After hearing of both sides, the ward tribunal decided that the respondent did not trespass on the appellant's land.

The appellant was not satisfied with the decision of the Ward tribunal and decided to appeal to the District Land and Housing Tribunal of Moshi. On his first appeal the appellant complained mainly on two issues first that the ward tribunal had erred by involving their secretary in the matter contrary to section 5(3) of the Ward Tribunals Act. Secondly, that the Ward tribunal had erred by failing to comply with the provision of section 24(2) of the Ward Tribunals Act. Based on those grounds the appellant prayed for his appeal to be allowed with cost and the decision of the Ward tribunal to be set aside. Deciding on the appeal the District Land and Housing Tribunal did not find merit in appellant's appeal and decided to uphold the ward tribunal's decision.

Once again, the appellant was aggrieved with the decision of the District Land and Housing tribunal hence preferred a second appeal in this court. On his second appeal the appellant complained on three distinct issues first was that the Ward Tribunal was not properly composed, second is that

the quorum was not observed as per the law and third is failure by the trial tribunal to record the observations made after visiting the locus in quo.

The appeal was disposed of by way of written submissions. The appellant was represented by Mr. Engelberth Boniphace learned counsel while the respondent fended for himself. Both parties' submissions were timely filed as ordered and the effort is commendable.

I have thoroughly read the proceedings before the Bomang'ombe Ward Tribunal and its decision and that of the District Land and Housing Tribunal. I have also gone through the grounds of appeal and the submissions for and against. I will not reproduce what parties have submitted but will certainly consider all the submissions in determining this appeal in due course.

Having considered the rival submissions of both parties and to start, I am mindful this is the second appeal therefore as a matter of general principle this Court requires only to look into matters which came up in the lower court and were decided; not on matters which were not raised nor decided by neither the trial court nor the District Tribunal on appeal.

The argument by the appellant is that the claims raised touches the jurisdiction of the tribunal thus can be raised at any stage even in this appeal. This has caused me to refer his grounds of appeal. Both in first and second ground the appellant has claimed that the quorum of members of the tribunal was not constituted according to the law, thus for purpose of clarity hereunder I reproduce the law to such respect, section 4 of the Ward Tribunal Act provides;

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

*(a) Not less than four nor more than eight members elected by Ward Committee from amongst the list of names of persons resident in the Ward compiled in prescribed manner.*

*(2) N/A*

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

Whereas section 11 of the Land Disputes Courts Act, Cap. 216 [R: E 2019] provides as follows:

*"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."*

The argument by the respondent is that the grounds raised by the appellant are new which was not dealt at the first appeal at the tribunal. Having regarded the first two grounds of appeal raised, they question the validity of the composition of the members of the Ward tribunal during the hearing of this matter thereat, In view thereof I am settled that those grounds concerned the issues of jurisdiction thus can be raised at any time even in this appeal ( see **Mis Tanzania China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sisters** [2006} TLR .70 ), therefore I subscribe to the argument of Mr. Engelberth when he asserted that the same is allowable to be raised at this stage.

Now, in respect to the composition of members at the tribunal, I have entirely scanned the tribunal record, it shows there were three meeting of the members in resolving the dispute of the parties herein above. The first meeting was on 9/08/2018, I have keenly perused the written trial record it was marked page numbers 1 to 9. The anomaly starts at page 2, this is the page the members was displayed and signed page. No. 1 is silent, even at the end of proceeding it was not signed or to display members, in my view

questions may rise if the first page members were present or not and even at the end.

Another anomaly one member Madina Mohamed who was displayed on page 2 of the record above is not seen in the quorum issued the judgment on 3/09/2018 instead of there is a new member known as Revinant Mollel whom it suffice to say was not a member who heard the case as per quorum available at page 2 of the Tribunal Proceeding. The next meeting seems it was on 16/08/2018, this has no page number but also shows that is the day when the tribunal visited the locus in quo.

I have considered the above anomalies, the facts that there are changes of members without any explanation, and the facts that though the composition of members were correct in terms of numbers, but the fact it does not show whether they all were present at the beginning of the session and also reached the conclusion of the hearing, to my view it offended the law above. Not only that the insertion of the new member on the date of the judgment who according to the record was not present at the hearing also offended the above law, and further more the date of visiting locus in quo, since is the ward tribunal visited the area, in my view its composition as a ward tribunal must be well composed and since the same was not displayed

who were members in the said visit, I am satisfied the proceeding were total vitiated in law.

I wish to fortify my observations above by referring the case of **Anne Kisonge vs. Said Mohamed**, Land Appeal No. 59 of 2009, wherein the court interpreted the above provisions which provide for proper quorum of the members at the tribunal, thus had this to say;

*"My interpretation, of the cited law is that: the names and gender of the member participating in a case in the 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 a difficult to know as in this case, the members who participated to compose the judgment were the same as those who appeared during trial.*

(Emphasis is mine).

In view of what I have endeavored to discuss above, I find the two grounds of appeal raised by Appellant are meritorious and is accordingly upheld and sustained. However, since it touches the jurisdiction of the tribunal, I am settled the same is enough to dispose this appeal, thus I find no need to go further to the remaining ground.

Consequently, I nullify the proceedings and set aside the judgements of the two lower Tribunals. Since the Ward Tribunals, in terms of sections 45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, no longer have jurisdiction to adjudicate land matters, I thus cannot order a retrial.

Instead, I advise any a party who still wishes to pursue the matter, he may institute fresh case before a competent Tribunal subject to the current legal requirements. According to the nature and circumstances culminated this appeal to be allowed, each party to bear his own costs.

It is so ordered.



**DATED** at **MOSHI** this day of 5<sup>th</sup> December 2023.



X

JUDGE

Signed by: A. P. KILIMI