

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SUMBAWANGA DISTRICT REGISTRY**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 19 OF 2022**

*(Appeal from the Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 2 of 2022, Original Land Dispute No. 11 of 2021 of Namanyere Ward Tribunal)*

**BETWEEN**

**EMMANUEL MBILINYI.....APPELLANT**

**VERSUS**

**CHRISTIAN MPEPO.....1<sup>ST</sup> RESPONDENT**

**LINUS NDELEMA.....2<sup>ND</sup> RESPONDENT**

**JOHN NDELEMA.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**MRUMA, J.:**

This is a second appeal. The matter has its genesis from Namanyere Ward Tribunal. At the trial tribunal the Appellant (Emmanuel Mbilinyi) had sued the Respondents Christian Mpepo, Linus Ndelema and John Ndelema claiming ownership of piece of land situated at Kipundu Kala in Namanyere Ward in Nkasi District. After hearing the parties, the trial tribunal declared the Appellant the lawful owner of the disputed land. Dissatisfied with that decision, the Respondents appealed to the District Land and Housing Tribunal for Rukwa in Land Appeal No. 2 of 2022. The

appellate tribunal nullified the proceedings of the trial tribunal, set aside its judgment and orders.

Aggrieved by the appellate Tribunal decision, the Appellant has preferred this appeal by lodging the following grounds of appeal;

1. That the Honourable Chairman erred in law and facts, by making decision in favour of the respondents without considering the weight of the appellant evidence of which it was respondent failed to prove the case of the appellant.
2. That the Honourable Chairman erred in law and facts, misled in the record of tribunal of proceeding for evidence is not proper facts, failed to analyse the case at hand hence reached at unjustifiable and wrong decision.
3. That whether the illegality on the face of record the failure of the court to evaluate the evidence.
4. That Honourable Chairman erred in point of law has not hold that there is no any notice served the appellant to satisfy on it before reach to the judgment.
5. That the Honourable Chairman erred in law and facts determined the case when witness by the testimony relying on hearsay evidence which is not admissible in law the respondents have no called even single witness to prove the same.

6. That there is determinable issue to be determined by High Court of Tanzania at Sumbawanga in point of law.
7. That the Honourable Chairman erred in law for not looking of the illegality on the evidence face record in the ward tribunal did not evaluate the evidence properly.
8. That the Honourable Chairman erred in point of law did not go through the court record in order to determine the matter on merits as the case was proved by the appellant.

When this appeal was called on for hearing, parties appeared in person, and unrepresented. The court ordered the appeal to be argued by way of written submissions and parties filed their respective submissions as scheduled.

Submitting in support of the appeal, the Appellant contended that the trial tribunal failed to evaluate the evidence on record as a result of which it arrived at a wrong conclusion.

As to the second ground, the Appellant submitted that on the evidence on record, he had proved that he was the rightful owner of a piece of Land measuring 17 acres which was in dispute.

Submitting in support of the third ground, the Appellant contended that the trial tribunal was wrong to order costs in the matter while no party had incurred costs.

On the fourth ground, the Appellant contended that the trial tribunal was wrong to deliver its judgment in absence the parties and without fixing a date of judgment.

In reply, the Respondents opposed the appeal on the ground that the decision subject to this appeal did not give any party the right of ownership of the disputed land. He submitted further that the decision of the appellate Tribunal was proper because the appellate tribunal had powers to inquire into and determine disputes arising under the Land Act and the Village Land Act. Finally the Respondent contended that the appellant lacked *locus standi* to claim ownership of the disputed land since he admitted that it belonged to her mother. He maintained that the appellant was not a representative of her mother and her mother did not authorize him to commence the case on her behalf.

I have gone through the records of the lower tribunals, the grounds of the appeal and the submissions of the parties and I note that the District appellate tribunal is being faulted for quashing the proceedings , judgment and orders of the Ward Tribunal which were in Appellants favour on the ground that in view of the provisions of Section

45 and 46 of the **Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021 GN No. 41 of 2021** which came into force on 11/10/2021 nine (9) days before the institution of these proceedings, stripped off powers of Ward Tribunal to adjudicate and hand down judgment in land disputes.

In law the issue of jurisdiction is very fundamental. A court of law/tribunal cannot have power to inquire into and determine any matter brought before it unless it has been conferred with jurisdiction to do so by a statute. Following the coming into force of section 45 and 46 of the **Written Laws (Miscellaneous Amendment (No 3) of 2021** Ward Tribunals' powers to adjudicate land disputes were tripped off and they were left with powers to mediate and make recommendations only. Accordingly the District appellate tribunal was right to quash the proceedings, judgment and orders of the Ward Tribunal for want of jurisdiction. That said, the appeal is dismissed with costs to the Respondents.

It is so ordered.



  
**A. R. MRUMA**

**JUDGE**

**29.11. 2023**