

IN THE HIGH COURT OF TANZANIA

TANGA SUB-REGISTRY

AT TANGA

LAND APPEAL NO. 11 OF 2023

(Arising from the Judgment of the Handeni District Land and Housing Tribunal in Appeal No. 50 of 2019 originating from Misima Ward Tribunal in Case No. 03 of 2019)

HAJI MWARABU.....APPELLANT

VERSUS

HASSAN A. NKUBA.....THE RESPONDENT

JUDGMENT

K. R. Mteule, J.

21/03/2024 & 25/3/2024

In the District Land and Housing Tribunal of Handeni, the Appellant lodged **Appeal No. 50 of 2019** challenging the decision of Misima Ward Tribunal (Ward Tribunal) in **Case No. 03 of 2019**. According to the records from the lower tribunals, in the Ward tribunal, the Appellant Haji Mwarabu sued the Respondent claiming the Respondent to have been trespassed into his residential land by uprooting tree stumps without any permit from the Appellant. The Ward tribunal found the Appellant to have not managed to prove trespass against the Respondent. The Appellant appealed to the DLHT which upheld the decision of the Ward Tribunal. The Appellant is further aggrieved by the



decision of the DLHT, hence preferred this appeal before this Court. Although there are 6 grounds of appeal, these grounds can be paraphrased in what the Appellant asserts as errors in the DLHT as stated hereunder: -

- 1. Failure to note improper recording of the quorum of the Ward Tribunal,*
- 2. Improper description of the land in dispute*
- 3. Non consideration of Appellant's long-time occupation over the suit land.*
- 4. Misdirected location of the disputed land due to tribunal's failure to visit the locus in quo.*
- 5. Failure to assess and evaluate evidence*

The appeal was argued by a way of written submissions. The Appellant was not represented whereas the Respondent was represented by Mr. Obediendom Chanjarika Advocate. All the parties' submissions are taken into account in determining this Appeal.

Ground No. 1 concerns improper recording of the quorum of the members of the Ward Tribunal. Since this is a point of law which may dispose off the matter if found with merit, I will consider it firstly.




It is the Appellant's submissions that the quorum of the Ward Tribunal did not indicate the gender of the members and that some members who were not present in some of the hearings were included in the composition of the decision. The Appellant asserts further that the list of members varied in various hearing sessions by including new members who did not participate in previous sessions and sometimes excluding the members who participated in previous sessions.

The Appellant referred to the hearing proceedings held on 28/02/2019, arguing that there were 5 members who heard the case, who were **DAUDI S. BAKARI (CHAIRMAN), ISSA MBELWA (MEMBER), BATURI A KILLO (MEMBER), JUMA MSOLOKELO (MEMBER)** and **LUKA S. MBULYA** but on 04/03/2019 members were seven, namely **MWANTUMU S. DOGOLI (CHAIRMAN), DAUDI S. BAKARI (MEMBER), LUKA S. MBULYA, ISSA MBELWA, JUMA A. MSOLOKELO, JUMA S. KAYUNGI** and **HAMZA BAKARI**. According to the Appellant out of these seven, three never heard the matter in the first hearing while **BATURI A. KILLO** who was present at the first hearing, missed with no known reason. He mentioned the new ones to be **MWANTUMU S. DOGOLI, JUMA KAYUNGI** and **HAMZA A. BAKARI**.

The Appellant submitted further that on 14/03/2019 members were eight, that is **MWAJUMA S. DOGOLI, DAUDI, S. BAKARI, ISSA A. MBELWA, JUMA A. MSOLOKELO, LUKA S. MBULYA, BATULI A. KILLO, JUMA S. KAYUNGI** and **HAMZA I. KISEGE** and that **MWANTUMU S. DOGOLI** who attended only the second hearing went missing and **MWAJUMA S. DOGOLI** and **HAMZA I. KISEGE** appeared for the first time.

The Appellant added that on 15/04/2019 the Judgment was delivered by seven members who were; **MWAJUMA S. DOGOLI, DAUDI S. BAKARI, ISSA A. MBELWA, JUMA S. KAYUNGI, BATURI A. KILLO, HAMZA A. KISEGE** and **JUMA A. MSOLOKELO**, and amongst these seven members only three namely **DAUDI S. BAKARI, ISSA A. MBELWA, JUMA MSOLOKELO** who attended all hearing dates. He added that and **MWAJUMA S. DOGOLI** and **HAMZA A. KISEGE** attended hearing only on 14/03/2019 but participated in delivering the judgment while they missed two hearings one of 28/02/2019 and another one on 04/03/2019. That **JUMA S. KAYUNGI** was absent on the hearing date of 28/02/2019, **BATURI A. KILLO** was missing on the hearing date of 04/03/2019.



It is further submission by the Appellant that the proceedings of the lower Tribunal has not indicated the gender of the members at all and it included in its decision the members who were absent in some of the hearing dates.

It is the appellant's view, that in recording the composition of the Ward Tribunal, the gender of the members must be indicated and that there should be no change of the composition of members who hear the matter. He referred to the case of **ELISA LWAKATARE VS JOAS ZACHWA MUGANYIZI, MISC LAND CASE APPEAL NO. 63/2021, HIGH COURT OF TANZANIA (UNREPORTED)** which quoted with approval the principle in the case of **KASSIM NGOROKA VERSUS BENARD S/O MASEMBULA, MISC. LAND APPEAL NA. 03/2016, HIGH COURT OF TANZANIA, MBEYA**, that;

"... The law requires, proper composition of the Tribunal, must indicate names, gender and signature of each member, among members three must be women."

Other cases cited by the Appellant to support the above position are **ELIAS TILIPHONE MUSHESHE VERSUS EZEKIAH CRONERY, MISC LAND CASE APPEAL NO. 36/2019 [2021] TZHC 2376, HIGH COURT OF TANZANIA, BUKOBA**, found on

www.tanzilii.org; **EDWARD KUBINGWA VERSUS YA MATRIDA A. PIMA, CIVIL APPEAL NO. 107/2018 [2021] TZCA 662, COURT OF APPEAL OF TANZANIA, TABORA.** From the case of **ELIAS TILIPHONE MUSHESHE** the appellant quoted that following words;

"... Again, there is another fault. Gender of the members is not shown among the listed members. As there are precedents on the above cited irregularities, this court will not allow the glaring irregularities to remain on record..."

In appellant's view, the failure of the trial Tribunal to observe the mandatory requirement on the composition of the tribunal, did not only vitiate the proceedings and the resulting decision on the trial Tribunal but it also rendered the trial tribunal lack jurisdiction to try the case.

Having asserted impropriety in the Ward Tribunal including in its decision some of the members who did not participate in the hearing the Appellant cited the case of **MARIAM ALLY PONDA VERSUS KHERRY KISSINGER HASSAN [1983] TR 223 (HC).**

He challenged the participation of **MWAJUMA S. DOGOLI, HAMZA A. KISEGE, JUMA S. KAYUNGI and BATURI A. KILLO**, in the composition of the decision while they did not attend in some of the days when the matter was called for hearing. The Appellant submitted

- that the quorum of the Tribunal was improperly recorded for it included
- in its decision the members who were absent in some of the hearing dates.

From his submission, the Appellant prayed for this court to find merits in the first ground and allow the appeal with cost.

In response to the Appellant's submission on the propriety of the composition of the Ward Tribunal, Mr. Chanjarika submitted briefly that there were five members namely **DAUDI S. BAKARI, ISSA A. MBELWA, BATULI A. KILIMO, and JUMA A. MSOLOKELO.**

According to him **BATURI A. KILIMO** was a woman. He added that by the time of the determination of the appeal, the Ward Tribunals had already ceased jurisdiction to determine land disputes pursuant to **Section 13 of the Land Disputes Courts Act Cap 216 of 2019 RE.**

From what is submitted by Mr. Chanjarika, it appears that the Respondent does not dispute the Appellant's assertion that the quorum in the Ward Tribunal did not specify the gender of the parties. He argues that one Batuli Kilimo was a woman but he has not countered the Appellant's submission that it was not so indicated in the proceedings. Further, the respondent's counsel did not dispute the application of the principle in **ELIAS TILIPHONE MUSHESHE** supra that gender of the

- members must be indicated. I will be guided by this principle in the
- cases cited by the appellant to agree that there was an irregularity in in the Ward Tribunal in failing to disclose whether there were female in the composition of that Tribunal.

On top of the above, the Respondent's counsel did not dispute that there were members who did not participate in the hearing but participated in the composition of the judgment. He further does not dispute the principle in the case of **MARIAM ALLY PONDA VERSUS KHERRY KISSINGER HASSAN [1983] TR 223 (HC)** that parties who did not participate in the hearing cannot be involved in the composition of judgment. Since the appellants arguments are not disputed, then I agree with the Appellant that inclusion of member who were not present at the hearing in the composition of the judgment amounts to an irregularity in the Ward Tribunal.

The Appellant tried to establish an excuse in these irregularities basing on the lack of jurisdiction of the Ward Tribunals at the time when the appeal was before the DLHT. In my view, the change of law that ousted the jurisdiction of the Ward Tribunals in the matter did not maintain the irregular proceedings emanating from the said tribunals. Any legal irregularity needs to be corrected by the existing mechanisms of dispute

resolution. The irregularities noted in the ward tribunal are legally treated as rendering the trial tribunal lacking jurisdiction as it was not properly constituted.

From the above analysis, I agree with the appellant that, the DLHT ought to have noticed the improper constitution of the Ward Tribunal due to variation of members in hearing dates, participation of members who did not attend hearing in the composition of judgment and non-disclosure of the gender of the member of the tribunal. Since it is a point of law, the errors can be cleared at this stage of appeal as I do hereunder and no need to determine the other grounds of appeal.

From the foregoing, I find the proceedings in the Ward Tribunal to be tainted with fatal irregularities which ought to have been noticed by the DLHT. Consequently, I find the first ground of appeal to have merits. As such, I nullify the proceedings of the Ward Tribunal in **Case No. 03 of 2019**. As well, I quash and set aside the proceedings in the **Appeal No. 50 of 2019** and judgment and decree arising therefrom for being based on invalid proceedings of the Ward Tribunal. Since the Ward Tribunal ceased jurisdiction to determine land matters pursuant to **Section 13 of the Land Disputes Court Act, Cap 216 of 2019 RE,**



any party who is still interested in the matter is at liberty to file a suit in the District Land and Housing Tribunal. No order as to costs.



Court:

Dated at Tanga this 25th day of March, 2024

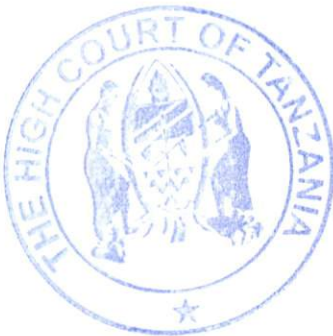
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KATARINA REVOCATI MTEULE

JUDGE

25th March 2024

Judgement delivered this 25th Day of March 2024 in the presence of the Appellant in person and Mr. Obediodon Chanjarika Advocate for the Respondent.



A handwritten signature in blue ink, appearing to be "KRM", is written over the printed name.

KATARINA REVOCATI MTEULE

JUDGE

25th March 2024