

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO 63 OF 2023/2631 OF 2024

(Arising from Revision No. 1 of 2023 before the District Land and Housing Tribunal of Mbulu at Dongobesh, Originating from Silaloda Ward Tribunal in Land Case No. 1 of 2023)

SANDE GURUAY.....1ST APPELLANT

KWAANG MORAM.....2ND APPELLANT

VERSUS

AXWESSO DEEMAY.....RESPONDENT

JUDGMENT

17th April & 29th May, 2024

KAMUZORA, J

This appeal emanates from Land Revision No. 11 of 2023 before the District Land and Housing Tribunal of Mbulu at Dongobeshi (herein to be referred to as the DLHT). The Appellant is challenging the decision of the DLHT which revised mediation proceedings of the Ward Tribunal in dispute No. 1 of 2023.

Briefly, Kwaang Moram (the 2nd Appellant herein) reported a complaint before Silaloda Ward Tribunal (to be referred as Ward Tribunal) against Sande Guruay (the 1st Appellant herein). His claim was that the

1st Appellant trespassed into his land. During mediation, the Ward Tribunal directed parties to resolve their dispute at the Mtaa executive office. The Ward Tribunal then recorded that the dispute was amicably settled between parties before the Mtaa Executive office and issued mediation certificate.

The Respondent who was not a party to the mediation proceedings before the Ward Tribunal instituted revision proceedings before the DLHT, Revision No 11 of 2023. The Respondent claimed to be the wife of the 2nd Appellant herein and prayed for the DLHT to examine the records of the Ward Tribunal and satisfy itself as to the correctness and legality or propriety of the decision and regularity of the proceedings of the Ward Tribunal. In the affidavit in support of the application before the DLHT, the Respondent herein claimed not to be aware of the agreement recorded before Silaroda Ward Tribunal. It was claimed that the 2nd Appellant herein was suffering from mental illness thus, had no capacity to enter into any agreement. It was also deponed that the mediation process was tainted with illegality for the size of suit land was not described and the Ward Tribunal was not well composed. After hearing the parties in revision proceedings, the Chairman observed that, the dispute was not mediated by the Ward Tribunal as required by law for, it was transferred to be mediated by the Mtaa executive office which had

no legal powers to mediate parties in land dispute. The Chairman then invoked his revisional powers under section 36 (1)(a) of the Land Disputes Courts Act, Cap 216 RE 2019 (the LDCA) by quashing the proceedings and setting aside the mediation certificate issued by the Ward Tribunal in dispute No. 1 of 2023.

Aggrieved by that decision, the Appellants brought this appeal on the following grounds: -

- 1. That, the tribunal grossly erred in law and facts by entertaining revision No. 11 of 2023 without any jurisdiction*
- 2. That, the tribunal erred both in law and fact in determining the case in favor of the Respondent herein by relying on proceeding of the Ward Tribunal contrary to the law.*
- 3. That, the tribunal erred in both in law and fact in entertaining revision No 11 of 2023 in which parties to the mediation before the Ward Tribunal are different from parties in revision application before the tribunal.*
- 4. That, the tribunal erred both in law and fact in entertaining revision No 11 of 2023 by relying on a letter dated 01/10/2016 presented by a person who is not specialist.*

When the matter was called for hearing, Mr. Simon Shirima, learned Advocate appeared representing the first Appellant while Mr. Festo Jackson ably represented the Respondent. The second appellant did not appear despite being aware of his appeal.

Submitting in support of the first ground, Mr. Shirima argued that the tribunal erred by determining Revision No. 11 of 2023 without jurisdiction. That, the Written Laws (Miscellaneous Amendments) Act No 3 of 2021 amended section 13 of the LDCA in which, the Ward Tribunal can only mediate and not adjudicate the disputes. That, the DLHT had no jurisdiction to revise mediation proceedings before the Ward Tribunal. That, section 36 of the LDCA requires the DLHT to invoke its powers of revision by calling the proceedings of the Ward Tribunal but mediation process contain no proceedings which is revisable. That, in course of mediation, the Ward Tribunal only gives opinion and whoever is not satisfied with the opinion can lodge a case before the DLHT thus, the DLHT cannot invoke revision powers on mediation process. He referred the case of **Christopher Wantora Vs. Masero Meck Makura**, Misc. Land Appeal No 112 of 2021, HC, pg. 4 to insist that parties were bound to file a case before the tribunal.

On the second ground, the counsel for the first Appellant submitted that the DLHT erred in deciding the case in favour of the Respondent relying on the proceedings of the Ward Tribunal contrary to the law. He agreed that section 36 of the LDCA, allows the tribunal to call for records of the Ward Tribunal. He however insisted that, since the law was amended removing the Ward Tribunal's powers to adjudicate land

disputes for it only deals with mediation, there was no proceedings to revise. That, section 45 of the amendment amended section 13 of the LDCA by adding subsection 4 to which the tribunal will only determine land dispute if it has passed into mediation process and the Ward Tribunal has certified that it has failed to settle the matter amicably.

On the third ground, the counsel for the Appellant submitted that the tribunal erred in determining Revision No. 11 of 2023 while parties to mediation before the Ward Tribunal are different from those who filed revision before the tribunal. He explained that, mediation before the Ward Tribunal was between Kwaang Morang and Sande Guruay but in revision application, the parties were Axweso Deemay Versus Sande Guruay and Kwaang Moram. That, the tribunal was not in a position determine the dispute between parties because the certificate of mediation contained different names hence, contrary to the requirement of the law.

On the 4th ground the 1st Appellant's counsel submitted that the tribunal erred in law to entertain revision application relying on the letter dated 01/10/2016 which was submitted by the person who was not an expert. That, the letter submitted to show that Kwaang Moram was sick but the same was not certified by any expert to prove the fact in the letter. He claimed that there are special forms used to verify sickness and those forms were supposed to be submitted and not otherwise.

The 1st Appellant's counsel concluded with a prayer for this court to find merit in this appeal and quash and set aside the proceedings, decision and order of the tribunal. The Applicant also pressed for costs of the appeal.

In reply, Mr. Festo Jackson, counsel for the Respondent joined all grounds of appeal and submitted that there is no dispute that the Respondent herein was not a party in Land Dispute No. 1 of 2023 before the Ward Tribunal. That, it is also not disputed that in order to mediate parties, a dispute must be lodged before the Ward Tribunal and that is why dispute No 1 of 2023 was lodged. That, the amendment referred by the counsel for the Appellant did not remove the revisionary powers of the DLHT. That, the amendment did not touch the provision of section 36 of the LDCA thus, the tribunal still maintains its powers of revision. He was of the view that, since the Respondent in this appeal was not a party to the mediation, the only available remedy was to file revision before the tribunal. He referred the position in the case of **Mosses Mwakibete Vs the Editor Uhuru and 2 others**, [1995] TLR 134 where the Court of Appeal of Tanzania held that a person who was not a party to the case can file revision.

The Respondent's counsel further submitted that the Ward Tribunal records were referred by the tribunal at page 3 of the judgment and one

of the complaints of the Respondent was that parties before the Ward Tribunal agreed to have settled the matter but nothing indicated that they had settled the matter between them. That, at page 6 of the ruling, the DLHT also referred what transpired at the Ward Tribunal and there were no minutes of the Ward Tribunal's meeting which was the basis of the settlement allegedly met at the Ward Tribunal. That, those errors were the basis of the revision by the tribunal against the settlement allegedly reached at the Ward Tribunal.

On the argument by the counsel for the Appellant that the Ward Tribunal has no adjudication powers, the Respondent's counsel submitted that there is no case law which was referred prohibiting the tribunal from entertaining revision or exceeding its revisional powers under section 36 of the LDCA. It is his opinion that, since there was a dispute before the Ward Tribunal to which the Respondent was not a party but has interest over the suit land, it was correct for the Respondent to prefer revision before the tribunal which was vested with jurisdiction to determine the revision application. The Respondent's counsel added that the tribunal did not base its decision on the letter dated 01/10/2016 as alleged by the counsel for the 1st Appellant. That, the decision was based on errors found in the proceedings of the Ward Tribunal. He thus prayed for the appeal to be dismissed with costs.

Rejoining on the argument that revision was the only remedy to the Respondent, the 1st Appellant's counsel added that the law requires the person claiming right over land to refer the dispute to the Ward Tribunal before filing a case before the DLHT. He maintained that the tribunal was not in a position to determine revision application because the case was to be referred to the Ward Tribunal for mediation.

I have keenly gone through the record and submissions by parties to this appeal and I will jointly deliberate to all grounds of appeal. It was argued by the counsel for the 1st Appellant that, revision cannot be invoked against mediation process as the only remedy available for parties aggrieved with mediation is to file a case before the DLHT upon obtaining mediation certificate from the Ward Tribunal. Going through record in the matter at hand, the respondent was not a party to mediation proceedings before the Ward Tribunal thus, the argument that a party aggrieved has to file a case upon obtaining mediation certificate is irrelevant. Since the applicant was not a party to mediation and claim to be affected with the end result of such mediation, revision was a proper remedy under the law. See, the decision in **Mosses Mwakibete Vs. Editor Uhuru and 2 others** (supra).

On the argument based on section 36 of the LDCA, the 1st Appellant's counsel claimed that although the said section gives powers

to the tribunal to call for and examine the records of the Ward Tribunal, there was no proceedings or decision of the Ward Tribunal that could be revised. Section 36 of the Act read: -

*36.-(1) A District Land and Housing Tribunal may call for and examine the record of **any proceedings of the Ward Tribunal** for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has-*

(a) not contravened any Act of Parliament, or subsidiary legislation;

or

(b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, and may revise any such proceedings.

(2) In the exercise of its revisional jurisdiction, a District Land and Housing Tribunal shall have all the powers conferred upon it in the exercise of its appellate jurisdiction.

The above provision is very clear that the tribunal can call any proceedings of the Ward Tribunal. It does not limit the powers to adjudication proceedings. The argument that mediation contains no proceedings is unfounded. Mediation is governed by law and therefore, all mediation processes must comply with the legal requirement. I do not agree with the contention by the 1st Appellant's counsel that there cannot be mediation proceedings subject to revision. The law on revisional powers of the DLHT was intended to regulate the powers of the Ward

Tribunal. The Ward Tribunal can commit errors not only in adjudication process but also errors can be committed when dealing with a land dispute in any other way stipulated under the law. Since the Ward Tribunal is vested with mediation powers, if any complaint arises regarding the abuse of such powers, it can be subjected to scrutiny of the tribunal to see if there was compliance of the law. In exercise of its mediation powers, the Ward Tribunal may error and it does not mean that such error cannot be corrected only on ground that it was not exercising adjudication powers. During the amendment of the LDCA the provision governing revisional powers of the tribunal was purposeful maintained for such reason. If the law intended the mediation proceedings not to be subjected to revision, it could have clearly repealed the provision of section 36 of the Act which govern revisional powers of the DLHT over the proceedings of the Ward Tribunal but it was maintained purposefully to regulate powers of the Ward Tribunal which currently are mediation powers.

In the matter at hand, there is no doubt that the procedure in mediation was abrogated by the Ward Tribunal by deciding to transfer its mediation powers to another body, the Mtaa Executive Office. In other words, the certificate issued by the Ward Tribunal was not based on the mediation proceedings of the Ward Tribunal rather the Mtaa Executive Office which is contrary to the law. The argument by the counsel for the

1st Appellant that the tribunal was not vested with powers to revise the mediation proceedings, is therefore baseless.

To my conclusion, revision application was properly preferred by the Respondent before the tribunal and the tribunal had jurisdiction to entertain revision No. 11 of 2023 because mediation proceedings before the Ward Tribunal is subject to revision. The tribunal's decision was correctly made on the basis of legality of the mediation proceedings of the Ward Tribunal and not on basis of the letter dated 01/10/2016 as alleged by the Appellants. There is nowhere in the tribunal's decision indicating that the decision was made on the basis of that letter. I therefore find the appeal devoid of merit and proceed to dismiss it with costs.

DATED at MANYARA this 29th Day of May 2024




D.C. KAMUZORA

JUDGE