

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISC. LAND CASE APPEAL NO. 10 OF 2012

(Arising from Land Appeal No. 24/2011 Maswa DLHT)

BALELE MARTIN.....APPELLANT

VERSUS

SHENYE NDEGE & OTHERSRESPONDENT

JUDGMENT

26th Aug. & 9th Sept. 2013

S.M. RUMANYIKA,J.

The appellant is not happy with the 31-01-2012 judgment and decree of the district land and housing tribunal – Maswa (DLHT). Nullifying the proceedings and definitely setting aside the subsequent orders of the trial ward tribunal- Bariadi. With liberty the appellant to refile it. But this time round as a legal representative on the estate.

He had three (3) grounds of appeal. But in essence they are two(2). The points are:-

- 1) error by the learned chair of the DLHT to recognized her as an adminitratix of the estate in issue.
- 2) Error in law and in fact on the part of the learned chair of the DLHT to nullify the trial tribunal's proceedings.

Parties appear non represented.

However, they had at the hearing, no submissions other than, and they asked me also to look at their pleadings then pronounce the judgment. So I am now set to do.

This appeal needs not consume much of my time. The learned chair of the DLHT, having disposed the appeal only on two grounds: one, the trial tribunal was not properly constituted two; the appellant had no **locus standi** and three; its members not examining the witnesses at the trial.

Sections 4 (1)(a) and 4(3) of the ward tribunals Act, Cap. 206 read together with S.11 of the land disputes courts Act Cap. 216 R.E. 2002 set the maximum of 8 (eight) members for each panel. But at least the minimum of four. But only three members sat and decided on the complaint. In deed the trial tribunal was not properly constituted. Therefore whatever they might have done had, no legal effects. The proceedings were properly nullified. So were the orders that were set aside by the DLHT.

As regards the appellant's **locus**, it was incumbent upon the learned chair to inquire further. Had he questioned appointment of the appellant by the probate court. Whether she had posed as a person at the institution of the appeal is immaterial. Only the documents as regards some one's appointment as a legal representative matters.

On the question of members not shown as had examined the witnesses, this one with respect to the learned chair, had no legal effects. Much as it is not a requirement at law. Courts or tribunals for that matter do put questions to witnesses whenever and whenever need arises. It could be for sake of further clarity. Not only for the purposes of examining. As such, I know not occasion whereby failure by court to put question(s) to a witness vitiated the proceedings.

All in all, the question of improper constitution of a court fundamentally goes to the roots of its jurisdiction. An improperly constituted court is as good as a no court. It is very unfortunate that the appellant pursued it by way of appeal at the DLHT. Infact she should have served public and personal time and resources better, had she complied with the DLHT advice. Reinstitution of the complaint at the same trial tribunal. Definitely to be entertained by different but this time a properly constituted trial tribunal.

Appeal dismissed with costs. Appellant to reinstitute the complainant at the ward tribunal. As earlier advised and directed.

R/A explained.



S.M. RUMANYIKA

JUDGE

08/09/2013

Delivered under my hand and seal of the court in chambers
this 09/09/2013. In the presence of the parties.



S.M. RUMANYIKA

JUDGE

09/09/2013