

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 28 OF 2010

(From the decision of the District Land and Housing Tribunal
of Njombe District at Njombe in Land Case Appeal No. 54 of
2009 and Original Ward Tribunal of Ipelele Ward in
Application No. 18 of 2009)

USHARIKA WA MISSIWA DKK/KKKT APPELLANT

VERSUS

COSMAS MWANGILA RESPONDENT

(Date of last Order 21.3.2013

Date of Judgement 11.4.2012)

JUDGEMENT

KIHIO, J.,

This is a second appeal by the appellant.

The respondent sued Jonas Mwahenje on behalf of the
appellant before Ipelele Ward Tribunal on a claim for
ownership over the disputed land and won the suit.

The appellant appealed to the District Land and Housing

Tribunal but the appeal was not successful. The appellant then brought this appeal.

The appellant raised three grounds of appeal in its Petition of Appeal. The three grounds are:-

1. That the District Land and Housing Tribunal erred in law and fact receiving and entertaining an appeal from ward Tribunal which had no members who heard the case.
2. That the District Land and Housing Tribunal erred in law and fact denying withdrawal of the appeal as requested by the Church representative one Pastror Godrey Ndelwa as per copy of a letter attached herewith to form part and parcel of this Petition of Appeal.
3. That the District Land and Housing Tribunal erred in law and fact upholding the decision of the Ward tribunal as if was heard while was not so.

The appellant is represented by Mr. Sanga, learned Counsel while the respondent's case is advocated by Mr. Mkwata, learned Counsel.

The hearing of the appeal proceeded by way of Written submissions.

In support of the first ground of appeal Mr. Sanga submitted that the appealed case had no members who tried it yet the appellate District Land and Housing Tribunal entertained the appeal which had such great omission and made a decision on such a misconceived appeal. He attached the Ward Tribunal's Judgement and referred this court to Section 11 of the Land Disputes Courts Act, No. 2 of 2002 in support of his submission.

In support of the second ground of appeal he submitted that the District Land and Housing Tribunal's Chairman ignored the applicant's application to withdraw the appeal without known reasons thus made a decision on an appeal from the Ward Tribunal which had no members who set and decide the case. He cited Rule 17 of Government Notice No. 174 of 2003 to back up his submission.

In support of the third ground of appeal he submitted that the appellate District Land and Housing Tribunal's Chairman was wrong in upholding the decision of Ipelele Ward Tribunal which decision had no members who sat deciding the case.

As regards the first ground of appeal Mr. Mkwata

submitted that a copy of the judgement on which the appellant is relying upon to support his contention is not authentic because it is a mere draft. He argued that Mr. Sanga's complaint that the Ward Tribunal had sat without members is therefore an empty cry intended to misled this court. He went on to argue that the complaint has come at the late hours of the day as the same was never raised on the first appeal before the District Land and Housing Tribunal.

As regards the second ground of appeal he argued that the said rule 17 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 was not applicable in the proceeding which were appellate proceedings i.e. the application. He further argued that in the second place the said rule does not impose mandatory requirements to the Chairperson to withdraw application(s) in every instance an application to withdraw is placed before the Tribunal.

As regards the third ground of appeal he submitted that as the arguments raised in support of the third ground of appeal are not different from the one raised in support of the first ground of appeal he adopted his submissions in respect of the first ground of appeal.

The first issue for determination in this appeal is whether the Ward Tribunal was properly constituted or not.

Section 11 of the Land Disputes Courts Act, Cap. 216 R.E. 2002 cited by Mr. Sanga provides that:-

“Each Ward 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, 1985”.

The Ward Tribunal's proceedings clearly show that on 8.9.2009 the respondent briefly stated the substance of his claim and Jonas Mwahenje denied the claim when the Tribunal consisted of six members. One woman, one Emelda Sigala sat on that day. On 14.9.2009 when the respondent's witness, one Abelio Sanga and Jonas Mwahenje's witness, one Godfrey Ibrahim Ndelwa testified the members who constituted the Tribunal were not shown. The Tribunal's judgement plainly show that the said Emelda Sigala and four men members signed on the judgement.

As one woman sat at the trial in the Ward Tribunal and signed on the Ward Tribunal's judgement I entertain no doubt that the Ward Tribunal was not properly constituted under the law. Thus, the Ward Tribunal's proceedings and judgement thereto were a nullity.

As the Ward Tribunal's proceedings and judgement thereto were a nullity the District Land and Housing Tribunal's decision was also a nullity as it emanated from proceedings and judgement which were a nullity.

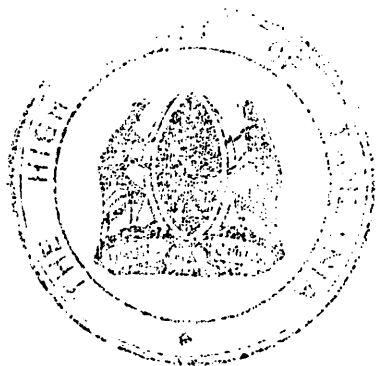
Having found that the ward Tribunal's proceedings and judgement thereto and the District Land and Housing Tribunal's decision were a nullity, I find that it is not necessary to dwell on discussing the other issues.

From the foregoing reasons, I allow the appeal.

The whole Ward Tribunal proceedings and District Land and Housing Tribunal's decision are quashed.

The respondent is at liberty to institute fresh suit if he so wishes in accordance with the law.

The parties will bear their respective costs here and below.




S.S.S. KIHIO

JUDGE

11.4.2013

Judgement delivered in the presence of Pastor Martin Kyando on behalf of the appellant and Mr. Mkwata, learned Counsel for the respondent.


S.S.S. KIHIO

JUDGE

11.4.2013