

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 32 OF 2012

(From the decision of the District Land and Housing Tribunal of
Njombe District at Njombe in Land Case Appeal No. 45 of 2011
and Original Ward Tribunal of Iwawa Ward in
Land Case No. 56 of 2010)

MAGDALENA SANGA APPELLANT

VERSUS

OBETH MAHENGE RESPONDENT

12/8/2014 & 22/10/2014

JUDGMENT

MADAM SHANGALI, J.

This matter started before Iwawa Ward Land Tribunal in Land Case No. 56 of 2010. In that case the present appellant MAGDALENA SANGA sued the present respondent OBETH MAHENGE claiming that the later had trespassed into her piece of land situated at Mwakidetsula area within Iwawa village and unlawfully harvested her trees thereof.

The trial Ward Tribunal dealt with that case inquisitively by hearing and critically questioning a good number of witnesses from both sides and eventually visited the locus in quo in the company of both parties and their witnesses. In its final and questionable decision which undoubtedly happened to be unanimous decision the trial Ward Tribunal ruled in favour of the appellant. I will explain later why I referred to that decision as questionable.

The respondent was not satisfied with the decision of the trial Ward Tribunal. He filed an appeal to the District Land and Housing Tribunal at Njombe. Having heard the appeal the first appellate District Land Tribunal overturned the decision of the trial Ward Tribunal and ruled in favour of the respondent by declaring him the lawful owner of the piece of land in dispute. The first appellate District Court also ordered the present appellant to pay to the respondent T.Shs.1,000,000/= being compensation for trees illegally harvested by the appellant.

The appellant was not satisfied with that decision. She preferred this second appeal intending to challenge the decision of the first appellate District Land Tribunal.

The appellant has filed two grounds of appeal namely;

1. That the first appellate tribunal erred in law and

fact by admitting the evidence of the respondent which was not sufficiently proved and thereby throwing overboard the evidence of the appellant (*original applicant*) which was proved on the balance of probabilities.

2. That the first appellate tribunal erred in law for failing to write the judgement as required by the law of which failure renders the judgement of the tribunal to be no a judgement at all.

In the hearing of this appeal the appellant was represented by Mr. Malangalila, learned advocate while the respondent was represented by Mr. Ngafumika, learned advocate. The appeal was heard by way of written submission. Both sides have filed their written submissions in accordance with the agreed schedule.

It was when I was going through the record of proceedings and judgements of the lower tribunal when I discovered that there is nothing in the record of the trial Ward Tribunal which can be called a decision or a judgement. Having heard the case, the trial Ward Tribunal recorded the opinions of the members as “*MAONI YA WAJUMBE*”. Thereafter the trial Ward Tribunal recorded what is headed as “*KUTOPEWA HAKI MDAIWA OBETI MAHENGE*”. Then the tribunal listed three reasons for deciding

in favour of the appellant without composing a judgement. That is what I termed questionable decision.

A judgement or a final decision of any tribunal must first and foremost contain a heading to distinguish it from any other matter like pleadings, report, submissions or any other findings. It must contain issues in controversy together with a brief statement of evidence, facts and reasons which led the tribunal to its final decision. In the whole record of proceedings of the trial Ward Tribunal there is nothing to be termed a judgement or final decision. It goes without saying that the decision of the first appellate District Tribunal was based on unexisting judgement or decision of the trial Ward Tribunal. In other words the first appellate District Tribunal was based on a purported judgement of the Ward Tribunal which is, by all standards undefendable.

In the circumstances, I hereby declare the whole proceedings before the first appellate District Tribunal a nullity and order that the record and proceedings of the trial Ward Tribunal be remitted back to the trial Iwawa Ward Tribunal to compose a judgement. After the composition of the judgement any aggrieved party may appeal thereof. For the avoidance of doubt the decision of the first appellate District Tribunal is quashed and set aside for being a nullity.

The appeal is hereby allowed to that extent. Each side to shoulder it's costs.

M. S. SHANGALI

JUDGE

22/10/2014

Judgement delivered in the presence of Mr. Ngafumika for the respondent and holding brief for Mr. Mwamgiga learned advocate for the appellant.

M. S. SHANGALI

JUDGE

22/10/2014