

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPEAL NO. 62 OF 2012

KULUTHUM MLUMANGE.....APPELLANT

VERSUS

**JOSEPHINA JOSEPH LITEREKO
(Administratrix of the estate of
the late FELICIAN CHINYALA).....RESPONDENT**

Date of the Last Order: 29/5/2014

Date of the Judgment: 12/6/2014

JUDGEMENT

B.R. MUTUNGI, J.

Having been aggrieved by the decision of the District Land and Housing Tribunal for Kilombero in Land Appeal No. 4/2011 the Appellant KuluthumMlumange in her amended Petition of appeal raised four grounds of appeal. The following are the grounds;

1. That, the learned chairman erred both in law and fact in holding that the appellant is not a rightful owner of

the disputed piece of land of which she acquired the same through her brother who was allocated the same land by the village council through receipt No. 09258.

2. That, the learned chairman who presided over the appeal having found that the receipt number 09258 bears the name of one Henry Marius Mlumango Misdirected himself in declaring the respondent to be the lawful owner of the disputed piece of land.
3. That the learned chairman and lay member of the appellate tribunal erred in both fact and law by varying the trial tribunal's decision and deciding in favour of the respondent who had never adduced evidence before the trial tribunal to prove his ownership over the disputed piece of land to that effect.
4. That, the land chairman and the lay members of the appellate tribunal totally failed to evaluate the evidence on the case record properly adduced before

the tribunal hence arrived to a wrong conclusion of the matter.

Wherefore the appellant prays for Judgment and Decree on appeal for the following:-

1. The appeal be allowed
2. The Judgment and Decree on appeal of the first appellate tribunal be set aside.
3. The appellant be declared to rightful owner of the disputed farm and the trial tribunal's decision be restored
4. Costs of this appeal be provided for
5. Any other relief(s) this honourable court may deem fit and/or just to grant.

At the hearing of the appeal the appellant was represented by Mr. Masaka learned counsel whereas the respondent who earlier had Gaston Chinyala (as the administrator of the estate of the late Felician Chinyala) was

now represented by Josephina Joseph Litereko the new administrator. In urging the appeal Mr. Masaka consolidated the first and second grounds as one and 3rd and fourth ground as the other. Essentially the appeal had two grounds of appeal. Starting with the first ground the learned counsel submitted that the appellate tribunal had rightly found that the receipt in regards to the disputed land had the name of one. Henry Marious Murumange who was the mother of the appellant. Despite the said finding the appellate tribunal entered judgment in favour of the respondent. Worse still the name on receipt no 09258 was neither of the appellant nor of the respondent. In other words the two had no locus to sue. The court should now declare that the disputed land belonged to Henry Marious Mulumange.

As to the second ground the learned counsel submitted that had the appellate tribunal evaluated the evidence properly would have upheld the trial tribunal's Judgement and this is what is prayed for in this court in this appeal.

In response the respondent stated that they had been allocated the disputed Land by the village council in 1991 and given a legal title by the village council in 1992. It is thus absurd that in 1998 there appears a receipt on the said land. This is not a legal receipt issued by the village council which allocates the village land.

Before embarking on the filed grounds of appeal and upon careful perusal of the so called "Decision of Ward Tribunal of Umemo", I find the gender of the presiding members is not known. To add salt to the wound the said decision is not stamped by the chairperson nor signed.

Section 24(1) Ward Tribunal Act Cap 206 requires proper record of proceedings of ward tribunals to be kept.

One cannot say that proper proceedings were kept if the names of members of the tribunal are not shown in the Judgement of Ward Tribunal. There have been instances where secretaries of tribunals have constituted themselves into the coram of the tribunals and this can be checked by indicating the names of the members who sat in determining the dispute in the tribunals.

The copy of the Judgment of the Ward Tribunal does not reveal the gender status of members who participated in that decision contrary to Section 14(1) of the Land Dispute Court Act Cap 216 RE: 2002.

It is very unfortunate, the aspect of the coram in the Judgment of Ward Tribunal of Lumemo, stamp and signature of chairperson and the gender of the members of the tribunal does not appear to have crossed the mind of the learned chairperson of District Land and Housing Tribunal of Kilombero who heard the appeal from the Ward Tribunal. Had it crossed his mind I have no doubt that he could have realized that what was appealed against before him as a decision of the ward tribunal could not be properly so termed as the decision of the ward tribunal because there was nothing like that in the eyes of the law.

It is my settled finding that, the District Land and Housing Tribunal chairperson ought to have directed his mind to this aspect unfortunately he did not do so as a result he proceeded to deal with an appeal which one can conclude did not originate from a properly constituted

ward tribunal. He ought to have quashed and set aside whatever appeared to have transpired in the ward tribunal and given appropriate directives to the ward tribunal. The defects so found were fatal to the proceedings.

As the proceedings and the Judgment of District Land and Housing Tribunal were based on the proceeding and decision of ward tribunal that was not properly constituted, stamped and signed by chairperson, such judgment cannot be left to stand.

In view of the above the court need not be detained any longer in determining the grounds of appeal lodged by appellant due to the aforesaid legal irregularities found in the judgment of the ward tribunal of Lumemo. I thus conclude that the proceedings, judgments and decree of both lower tribunals are hereby nullified and quashed and the matter to be tried de-novo at the ward tribunal.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

12/6/2014

Read this day of 12/6/2014 in the presence of the Appellant in person and Aquilin Lucas Manda the Respondent's brother.

B.R. MUTUNGI

JUDGE

12/6/2014