

IN THE HIGH COURT OF TANZANIA  
[LAND DIVISION]  
AT IRINGA

MISC.LAND CASE APPEAL NO. 10 OF 2013  
(From the decision of the District Land and Housing  
Tribunal of Njombe District at Njombe in Land Case Appeal  
No. 33 of 2011 and Original Ward Tribunal of Kifanya  
Ward in Application No. 21 of 2011)

BENWARD CHATANDA ..... APPELLANT  
VERSUS  
IMAKULATA MKONGWA .....RESPONDENT

5/3/2015 & 5/6/2015

**JUDGEMENT**

MADAM SHANGALI, J.

The appellant Benward Chatanda was successfully sued for trespass before the Kifanya Ward Tribunal by the respondent IMAKULATA MKONGWA; but in an unorthodox practice the trial Ward Tribunal allowed the appellant to continue with his trespass, to wit, to care for his illegally planted trees on the suit land for 8 years when he will be

required to vacate the suit land and hand it to the lawful owner, the respondent.

Dissatisfied with that decision, the respondent filed the first appeal before the District Land and Housing Tribunal at Njombe. The District Land and Housing Tribunal, as the first appellate Tribunal unanimously decided in favour of the respondent, reversed the decision and ordered the appellant (*trespasser*) to vacate and hand over the suit land to the respondent immediately.

The appellant was not satisfied. He has now filed this second appeal on three grounds of appeal, namely;

1. That, the appellate tribunal erred in law and fact by proceeding with the appeal when the Ward Tribunal was legally unconstituted (sic) and hence the appellate Tribunal ought to have ordered for re-trial.
2. That the appellate tribunal misdirected itself by awarding the whole three farms to the respondent without any valuation and assigning any reason to it.
3. That the appellate tribunal misdirected itself by

not addressing the moral aspect of the appellant of planting the trees, as the trial tribunal did in that respect (sic).

Parties to this appeal were all represented by learned advocates. Mr. Alfred T. Kingwe represented the appellant, whereas, Mr. Frank Ngafumika appeared for the respondent.

On 4<sup>th</sup> December, 2014 parties were allowed by this court to argue this appeal by way of written submissions. The parties complied with the scheduling order of the court. I should point out at this stage that in his written submission, Mr. Kingwe had decided to abandon the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal and argued the 1<sup>st</sup> ground of appeal only.

The contentious issue on the 1<sup>st</sup> ground of the appeal, as contended by Mr. Kingwe and conceded by Mr. Ngafumika in his reply to the written submission is on the composition or constitution of the trial Ward Tribunal which poses as a procedural irregularity that goes to the root of the matter.

Mr. Kingwe submitted to the effect that the trial Ward Tribunal was wrongly constituted because it consisted of five members of whom two were women and three outstanding members were men contrary to Section 14 (1) of the land

Disputes Court Act, 2002 which provide that the tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman. He further contended that the members of the trial tribunal did not sign the judgment of the trial ward tribunal delivered on 4<sup>th</sup> April, 2011, an act which raises doubt on whether the listed members did participate in the said mediation. In support of his proposition, Mr. Kingwe cited the decision in the case of **Halmashauri ya Walei Parokia ya Matembwe Vs. Petro Kitalula, Misc. Land Case Appeal No. 29 of 2010, HC at Iringa** (*unreported*) where the appeal was allowed and decision of the lower tribunals reversed on the ground that the trial Ward Land Tribunal violated the provisions of Section 14 (1) of the Land Disputes Court Act, Cap. 216 which provides for the composition or quorum of the Ward Land Tribunals.

As I have pointed out hereinabove, in his response Mr. Ngafumika in a very brief written submission decided to swallow Mr. Kingwe's arguments hook, line and sinker and conceded to the ground of appeal.

I have keenly perused the record of proceedings and the decision of the trial Ward Tribunal and observed that the quorum was perfect and in accordance with the law. There was a Chairman by the name of OLIVA MFIKWA. A Secretary

in the name of VITUS MAYEMBA and three members, namely;

1. KASIAN KIGANE
2. BLASIUS MAYEMBA
3. BITRES MFUGALE

This court had in a number of occasions dealt with this jurisdictional matter which has its genesis from Section 14 (1) of the Land Disputes Courts Act, Cap. 216, R.E. 2002 which specifically provides for the quorum of the Ward Tribunal thus;

*"14 (1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.*

*(2) The Chairman to the Tribunal shall select all three members including a convener who shall preside at the meeting of the tribunal.*

*(3) In the event of the equality of votes, the member presiding shall have a casting vote in addition to his deliberative vote.*

(4) *The Ward Tribunal shall, immediately after settlement of a dispute record the order of mediation."*

In the case of **Juliana Kiyeyeu Vs. Saidi Mpewa, Misc. Land Case No. 31 of 2012, HC at Iringa (unreported)** I stated what appears to be, my firm observation on the issue. In Juliana's case I distinguished the scenario of that case, which is similar to this appeal, with the position in the case of **Halmashauri ya Walei Parokia ya Matembwe** (*supra*) in the sense that the three members as stated under the above provision of the law are selected by the Chairman and therefore the Chairman and the Secretary are not among the stated three members. Therefore a properly convened quorum for the Ward Tribunal consists of the Chairman, three members and a secretary.

Therefore the trial Ward Tribunal was correctly and properly constituted in accordance with the law. Furthermore, Mr. Kingwe did not state the law that provides for the signing of the Judgement of the Ward Tribunal by all members. The record and the Judgement of the trial Ward Tribunal is clear that its decision was an unanimous decision signed by the Chairman and affirmed by the parties.

From the foregoing, I disagree with both learned

advocates and hold that the trial Ward Tribunal in this case was properly constituted and the decision thereof was properly procured. In fact I have perused the decision of the first appellate District Land Tribunal, and found it to be sound and justified. Henceforth, the appeal is hereby dismissed. No order for costs.

M. S. SHANGALI

**JUDGE**

5/6/2015

Judgement delivered in the presence of Mr. Kingwe, learned advocate for the appellant and in absence of the respondent and his advocate Mr. Ngafumika.

M. S. SHANGALI

**JUDGE**

5/6/2015