

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT IRINGA**

**MISC. LAND CASE APPEAL NO. 8 OF 2015**

**(Originating from the Decision of District Land and  
Housing Tribunal of Iringa at Iringa)**

**ANGELIKA MOFUGA ..... APPELLANT**

**VERSUS**

**PASCAL KAWAGANISE ..... RESPONDENT**

29<sup>TH</sup> JULY, 2016 & 6<sup>TH</sup> SEPTEMBER, 2016

**JUDGMENT**

**KIHWELO, J.**

This is an appeal against the decision of the District Land and Housing Tribunal of Iringa (henceforth “the appellate tribunal”) (Hon. A. Mapunda) dated 13<sup>th</sup> February, 2015 in which he disallowed the appeal by the appellant from the decision of the Luhota Ward Tribunal (henceforth “the trial tribunal”) which declared the respondent the rightful owner of the suit premises.

A brief background to this appeal is that the appellant unsuccessfully sued the respondent before the trial tribunal for trespass. She alleged that

the suit land was hers while the respondent refuted the claims and alleged that he was a legitimate purchaser for value of the suit land from one the late Chesam Mofuga. Upon hearing both parties the trial tribunal decided the matter in favour of the respondent by declaring him the rightful owner.

The appellant was not satisfied as such he filed an appeal to the appellate tribunal which however upheld the decision of the trial tribunal. Aggrieved by the decision of the appellate tribunal the appellant came to this Court by way of appeal challenging the decision of the appellate tribunal. In support of the appeal the appellant filed a four point Petition of Appeal which essentially she alleged that there was no sufficient evidence to prove that the respondent was the lawful owner of the suit land.

During this appeal the appellant engaged the services of Mr. Edward Kenyunko, learned counsel but later was replaced by Mr. Kalengela Emanuel, learned counsel while the respondent was under the services of Ms. Stella Mwakingwe, learned counsel.

Upon submission in support and opposition of the appeal the court requested the parties to address it on the coram of the trial tribunal in view of Section 11 of the Land Disputes Courts Act, Cap 216 RE 2002.

Amplifying on the issue Mr. Kalengela contended that Section 11 of Cap 216 requires the composition to be not less than four and not more than eight and therefore according to Mr. Kalengela the proceedings at the trial tribunal were a nullity.

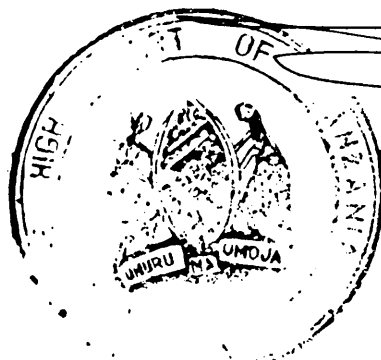
On her part Ms. Kingwe admittedly argued that Section 11 of Cap 216 requires the minimum composition to be four members. However, she went on to argue that according to the proceedings of the trial tribunal three members sat but the secretary although does not appear in the coram but he signed the proceedings and therefore by necessary implication he was present hence making the total of four members which is the requirement under Section 11.

It is evident from the record before me that there is only one issue for consideration and that is whether the proceedings before the trial tribunal were a nullity for lack of the requisite coram.

This does not need detain me much, as Mr. Kalengela asserted, correctly in my view that the composition of the ward tribunal according to Section 11 is four members and in the instant case the composition was merely three which is beyond the statutory minimum. Time and again this Court has held that the composition of members must be conspicuously written at every seating of the tribunal which is not the case in here. See the case of **Julius S. Mshai V Daud Mlumba**, Miscellaneous Land Appeal No. 11 of 2008, High Court of Tanzania at Dodoma (unreported) and my own unreported decisions in **Elizabeth Nindi V Mama Sambage**, Miscellaneous Land Case No. 13 of 2008, High Court of Tanzania at Iringa and **Leonard Malenda V Jumanne Malenda**, Miscellaneous Land Case Appeal No. of 2011, High Court of Tanzania at Iringa.

I am of the considered opinion that, by relying on the established principle of the law as stated in the cases mentioned above I am constrained to find no merit in Ms. Mwakingwe's submission.

In the final analysis, the judgment of the trial tribunal is hereby declared to be a nullity. Since the decision of the appellate tribunal arose from a nullity proceeding the same is equally declared to be a nullity and is hereby set aside. The Court records should be transmitted back to the trial tribunal through the appellate tribunal for it to be *tried de novo* with the appropriate composition. Because the error was done by the two lower tribunals and this court raised it *suo motto* each part to bear own costs.



  
P. F. Kihwelo  
**JUDGE**  
30/08/2016

Judgment to be produced by the Deputy Registrar on 6<sup>th</sup> September, 2016.



  
P. F. Kihwelo  
**JUDGE**  
30/08/2016