

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

MISC. LAND CASE APPEAL NO. 154 OF 2019

*(From the Decision of the District Land and Housing Tribunal of Morogoro District at
Morogoro In land Case Appeal No. 110 of 2017)*

NURU MPUNDAAPPELLANT

VERSUS

ALLY ABBASI RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

This appeal emanates from the decision of the District Land and Housing Tribunal ("The Tribunal") for Morogoro in Land Appeal No. 110/2017 ("The Appeal"), an appeal from the decision of Kihonda Ward Tribunal ("The Trial Tribunal") in Land Case No. 17/2014. At the Tribunal, the appellant's ground of appeal was that she was condemned unheard by the trial tribunal. The first appellate tribunal dismissed the appeal for lacking merits hence this appeal on the following grounds:

1. That the appellate tribunal erred in law and in fact to uphold the decision which is founded on the trial and determined of the same carried out without first determining its pecuniary jurisdiction to try the said land dispute.

2. That, the Appellate District Land and Housing Tribunal and the Ward Tribunal erred in law and fact to declare the respondent the lawful owner of the disputed land.
3. That both the Appellate District land and housing Tribunal and the Ward Tribunal erred in law and fact by entertaining the matter with unauthorized representative or agent hence the purported respondent had no locus stand.
4. That both the appellate District Tribunal and the Ward Tribunal erred in law and fact erred in law and fact by ignoring the principle of natural justice and right to be heard.

In the petition of appeal, the appellant's prayers were that:

1. The Appeal be allowed with costs.
2. The judgment, decree and Orders delivered by Morogoro District Land and Housing Tribunal be quashed and set aside.
3. Any other relief(s) that this honorable court may deem fit and just to grant.

I must point out on the onset that as earlier elaborated, at the tribunal, the appellant herein who was also the appellant then, advanced only one ground of appeal, that the trial Tribunal erred in law and in fact in denying the appellant right to be heard. However, at this stage of second appeal, the appellant's ground 1-3 were never tabled before the first appellate tribunal who in law, had the opportunity to wear the shoes of the trial tribunal and re-analyse the evidence. Since those grounds were never raised at the first appellate tribunal, they cannot be raised to be determined at this point. Hence my determination of this appeal shall only

base on the fourth ground of appeal that both the appellate District Tribunal and the Ward Tribunal erred in law and fact by ignoring the principle of natural justice and right to be heard.

In her submissions to support the 4th ground of appeal, the appellant submitted that she was not given the chance to defend her interest before the tribunal because she was in jail. That the principle of equality before the law stipulated under Article 13(6)(a) of the Constitution of the United Republic of Tanzania 1977 (as amended from time to time) was not followed as the situation rendered the appellant rights over the disputed land to be curtailed and leading the trial tribunal to reach the wrong decision against the appellant. She argued that Section 45 of the Land Disputes Courts Act, No. 2 of 2002 allow decision to be revised or altered on appeal when it has occasioned a failure of justice. She prayed that the court take into consideration all the facts and the evidence adduced by the appellant and grant the appeal for the interest of justice.

In reply on the 4th ground, the respondent submitted that the appellant had sent her son to represent her and the same is supported in the provisions. He insisted that she was not denied the right to be heard. He prayed that the appeal is dismissed.

Having heard both sides and having perused the records of the tribunal, I have noted some irregularity in the record of the tribunal that I need to address. The records of the tribunal start on the 26/05/2014 when the tribunal recorded the complainant's case and reply by the respondent, one Amrani Ally who was present and was the one who replied to the complaint. But there is no place which elaborated the capacity of the said

Amrani Ally. The matter was then adjourned to 19/06/2014, however, no quorum of the tribunal was recorded on that day. Furthermore, it was only the witnesses of the complainant that were mentioned on that day, the respondent's witnesses were not mentioned. The matter came again on the 05/06/2014 a date which was never scheduled before, and on 19th June, the tribunal recorded that the appellant herein agreed to pay the respondent a sum of Tshs. 12,000,000/- but there is no record to show that any of the parties were present or which members of the tribunal were present on that day.

Miraculously, the matter emerged again on the 24/07/2014 and hearing of the respondent's witnesses (then applicant) proceeded. But there is no quorum to show who was present or which members of the tribunal were there. The next time the matter emerged was on the 07/08/2014 when it came for judgment. It is in the judgment that the tribunal members were mentioned as the ones "who heard the matter". But at all times the records are silent on the attendance of parties or what quorum sat to hear the matter or what happened to the appellant or the said Amran who answered the complaint on the first day.

On those observations, it is obvious that the tribunal determined the matter without recording, apart from the judgment, the quorum of the trial showing who was present at the tribunal when the hearing proceeded. It is only at the end of the judgment of the trial tribunal that about seven members of tribunal and the chairman signed it. There is no place to show that all these members attended the tribunal in each day when the matter came for hearing. There is also no record to show why the matter proceeded only with the respondent's witnesses without having the

appellant's case heard. The omission is fatal as it is contrary to Section 4 of The Ward Tribunals Act, Cap. 206 R.E 2002 which provides the composition of the Ward Tribunal. The Section provides:

"(1) Every Tribunal shall consist of–

*(a) **not less than four nor more than eight** other members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;*

*(b) **a Chairman of the Tribunal** appointed by the appropriate authority from among the members elected under paragraph (a).*

*(2) There shall be **a secretary of the Tribunal** who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.*

*(3) **The quorum at a sitting of a Tribunal shall be one half of the total number of members.***

*(4) **At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote.*** (Emphasis supplied).



Section 4(3) of the Ward Tribunals Act (Supra) hence makes a mandatory requisite quorum of the tribunal which is half the total members as the word "shall" is used. Therefore for it to be ascertained as to whether or not

the provision was complied with, the quoram of the tribunal should be recorded in each sitting of the tribunal, so is the record of the attendance of the parties and the reasons to proceed with the trial with only one party. Failure to so record is fatal because it cannot be ascertained whether the tribunal was properly composed or not at the time it sat to determine a particular matter. And in this appeal, it is more crucial because no reason was adduced as to why the trial proceeded in the absence of the appellant hence condemning her unheard. All these omissions are fatal affecting the legality of the whole proceedings and the subsequent decision therein.

Owing to those findings, I allow this appeal by nullifying all the proceedings of the trial tribunal in Case No. 17/2014. The subsequent judgment and decree on appeal is also nullified. I have noted that the execution of the decision of the tribunal was already effected and the appellant evicted from the suit premises; I therefore order that the appellant be restored to the suit property immediately as her eviction emanated from a nullity hence illegal. The same procedure and machinery that was used to evict the appellant shall be used to restore her to the suit premises. The appellant shall have her costs for this appeal and the first appellate tribunal.

Appeal Allowed.

Dated at Dar es Salaam this 07th day of May, 2020



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S.M. MAGHIMBI
JUDGE