

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

**MISC. LAND APPEAL NO. 86 OF 2019**

(Arising from the District Land and Housing Tribunal for Morogoro in  
Land Appeal No. 110 of 2015; Originating from Kisemu Ward Tribunal in Land Application No. 1 of 2015)

**ANATHOLI SHAABAN HOMBWE.....APPELLANT**

**VERSUS**

**LUSIA KILIAN.....RESPONDENT**

Date of Last Order: 16.03.2021  
Date of Judgment: 03.05.2021

**JUDGMENT**

**V.L. MAKANI, J.**

This is a second appeal. The appellant **ANATHOLI SHAABAN HOMBWE** successfully sued the respondent at Kisemu Ward Tribunal (the **Ward Tribunal**) in Land application No. 1 of 2015. The respondent herein successfully appealed to the District Land and Housing Tribunal for Morogoro (the **District Tribunal**) in Land Appeal No. 110 Of 2015 (Hon. O. Y. Mbega, Chairperson).

Being dissatisfied with the decision of the District Tribunal the appellant has filed this appeal based on the following grounds of appeal:

- 1. That the trial Chairman erred in law and fact by holding that the suit land was purchased from the appellants father by respondents husband without a proof and valid sales agreement.*

- 2. That the trial chairman of the ward tribunal erred in law and fact when failed to evaluate the evidence tendered before the ward tribunal hence ended up issuing an erroneous decision.*
- 3. That the chairman of the district tribunal erred when entertained suit of which the corum of the members of ward tribunal was composed in violation of section 11 of the land disputes Courts Act,2002.*
- 4. That the chairman of the ward tribunal erred when decided in favour of the respondent by holding that buying of orange tree and one "mchenza" by the respondent's husband tantamount to buying of whole suit land.*
- 5. That the chairman of the district tribunal erred when applied a principle of adverse possession in declaring respondent as a lawful owner of the suit land without the proof of the abandonment of the suit land.*
- 6. That the chairman of the ward tribunal erred by declaring respondent as a lawful owner of the suit land even after the proof that respondent never participated in buying of the suit land.*

The appellant prayed for the appeal to be allowed and the decision of the District Tribunal be quashed and set aside.

With leave of the court the appeal was argued by way of written submissions. The submissions by the appellant were drawn and filed by Mr. Frank Kilian, Advocate, the respondent did not file her written submissions and therefore the matter proceeded ex-parte against her.

In his submissions, Mr. Kilian gave a brief background of the matter and opted to abandon ground number five. He consolidated the first and sixth grounds of appeal. In arguing the consolidated ground Mr. Kilian said that at the Ward Tribunal the respondent made it clear that she was not present when her husband purchased the suit land, and she does not know the person who sold the suit land to her husband. All what she knew is that her husband purchased trees from the disputed area and started pig farming. Mr. Kilian said that no Sale Agreement was tendered before the Ward Tribunal to show how title passed to the respondent. He added that at the District Tribunal the respondent had four grounds of appeal, but the Chairman dealt with a single issue and delivered judgment taking into consideration that the act of buying trees over the suit land amounted to buying the entire farm and hence the Tribunal declared the respondent lawful owner of the suit land. He said that the authenticity of the agreement relied upon is questionable as it does not bear the title of the subject matter, signature of the vendor and purchaser, date of the agreement, location of the suit land, boundaries, and even the size of the land sold. It only talks about the purchase of the trees from the deceased estate and therefore unsafe to be relied upon. He said that at the

Ward Tribunal there was solid evidence that the respondent's husband Mr. Laurent Mtawa and his companion Mr. Ambrozi Mdugi were present during the clan meeting which passed the suit land to the appellant and that all the properties on the suit land including trees and crops are owned by the appellant.

On the second ground, Mr. Kilian stated that the evidence of the respondent differed to a large extent. She testified that the suit land belonged to her husband and at the same time her evidence recorded at page 8 of the Ward Tribunal's proceedings stated that the disputed land is owned jointly between her husband Mr. Laurent Mtawa and its companion Mr. Ambrose Mdugi. It is unknown which area remained to Ambrose Mdugi and which remained to respondent's husband. Mr. Kilian said **DW1** Silvan Thobias Mzenge testified that the deceased sold trees to Mr. Laurent Mtawa and Ambrose Mdugi and the said witness never stated that the respondent purchased the area.

On the third ground Mr. Kilian said that section 11 of the Land Disputes Courts Act, 2002 requires the Ward Tribunal to be composed of not less than four members and not more than eight members, three of them shall be women. That at page one of the Ward Tribunal's

proceedings reveal that the quorum consisted of **Juma Mdidi, Juma R. Mkombo, Juma Mkoba, Aisha Hoseni, Pili Mohamed** and **Mohamed Halifa**. That out of six members only two were women and four were men. He said that the provision providing for the quorum of the Ward tribunal place a mandatory requirement that women should be three. He insisted that the provision has been violated.

On the fourth ground Mr. Kilian said that respondent and her witnesses testified that only three mango trees were sold to her husband and not the disputed land. He said that the Chairman of the Ward Tribunal misapplied the principle of *quid quid plantatur solo solo cedit* which means that whatever is attached to the land is part of the land or whoever owns the land owns the things attached to it. He said that this principle helps to ensure that the purchaser of the land does not acquire title or ownership of something which is not intended to pass with the land and vice versa. He insisted that the respondents husband bought only three mango trees and one "mchenza tree". He prayed for this appeal to be allowed with costs.

The main issue for consideration is whether this appeal has merit. The appellant decided to combine the first and the sixth grounds of appeal. He abandoned the fifth. He therefore submitted on the first and sixth grounds of appeal together, second, third and fourth grounds of appeal separately. Essentially, the first (as consolidated), second and fourth grounds of appeal are on the weight of evidence. Only the third is on the composition of the Ward Tribunal. Therefore, I will address this appeal basing on two issues: weight of evidence by the parties at both lower tribunals and the composition of the Ward Tribunal.

At the Ward and District Tribunals the appellant claimed to have inherited the suit land from his deceased father while the respondent herein claimed to have inherited the suit land from her deceased husband who purchased the same from the appellant's father one **Shabani Hobwe**. The original owner is therefore the appellant's father. The appellant being the descendant to the original owner can inherit the same and the facts of his inheritance was not disputed anywhere by his relatives. On the other hand, the respondent is not among the descendants to the late **Shabani Hobwe**, however she claimed to have inherited from her deceased husband who purchased from the late **Shabani Hobwe**. The only evidence to substantiate her

claim is the Sale Agreement between her husband and the late **Shabani Hobwe**. Thorough perusal of the records reveal that on 22/02/1977 the late **Shabani Hobwe** sold the following to **Ambrose Mdugi** and **Laurens Mtawa**: *michungwa 3, mchenza mmoja. Kwa thamani ya Shs 140/=*. As correctly observed by Mr. Kilian, the Sale Agreement relied upon does not have the signature of the vendor and purchaser and description and location of the land purchased. It only talks about the purchase of the trees from the deceased estate and therefore unsafe to state with certainty that this is a Sale Agreement capable of transferring the suit land to the respondent's husband as she claimed. In any case, the evidence at the Ward Tribunal is to the effect that when the appellant was being appointed the heir of **Shabani Hobwe** and the land was handed over to him, also present were **Ambrose Mdugi** and the respondent's husband **Laurens Mtawa** who are now alleged to have bought the same suit land from **Shabani Hobwe**. It was therefore improper, in my view, for the District Tribunal to hold that the said Sale Agreement transferred the suit land to the respondent's husband. In that regard, the appellants evidence outweighs that of the respondent. This ground therefore has merit.

The complaint by the appellant that the composition of the Ward Tribunal was not proper has no merit. Section 11 of District Land and Housing Tribunal states:

*"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."*

This is also recapitulated in section 4(1) of the Ward Tribunal Act. The quorum of the Ward Tribunal is provided in section 4(4) of the Ward Tribunal Act which provides that:

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

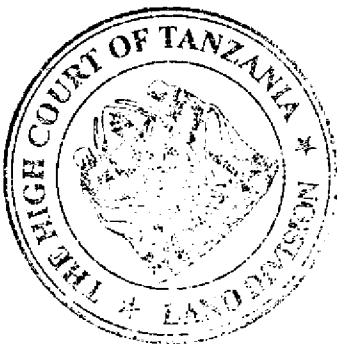
The above provisions provide for the overall composition of the Ward Tribunal and the quorum. They do not provide specifically as to ratio of men and women at a sitting at the Ward Tribunal. Going through the records, specifically page 20 of the Ward Tribunal's record shows the quorum reflected members to be Juma Mdidi, Juma R. Mkombo, Juma Mkoba, Aisha Hoseni, Pili Mohamedi and Mohamedi Halifa and therefore properly constituted. In any case, the issue of improper quorum of the Ward Tribunal was not raised at the District Tribunal and therefore it cannot be considered at this second appeal while it



was not heard and determined at the District Tribunal (see the case of **Hotel Travertine & 2 Others vs. National Bank of Commerce Limited [2006] TLR 133**. Subsequently, as stated beforehand this ground has no merit.

Having found the other grounds of appeal have merit, I proceed to allow the appeal with costs. The judgment and decree of the District Tribunal is quashed and set aside and the decision of the Ward Tribunal in Application No. 1 of 2015 is restored.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**03/05/2021**