

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

MISCELLANEOUS LAND CASE APPEAL NO. 112 OF 2019

*(From Appeal Judgment of District Land and Housing
Tribunal for Mkuranga, Land Case Appeal No.29 of 2018 of 201, originating from the Ward
Tribunal of Tambani Ward in Application No.2 of 2016)*

ASHURA MOHAMED MBAGALO.....APPELLANT

VERSUS

MWANANGOY MTORO MWANANGOY.....RESPONDENT

JUDGMENT

OPIYO J.

The grounds advanced by the appellant for his dissatisfaction with the decision of the District Land and Housing tribunal for Mkuranga as a first appellate tribunal, in Land Appeal No. 29 of 2019 are as follows; -

1. That, the trial tribunal and the 1st appellate tribunal erred in law and fact to enter their decision in favour of the respondent without taking into consideration that the trial tribunal was not properly constituted.
2. That, the first appellate tribunal erred in law and in fact to enter judgment in favour of the respondent without weighing the evidence for both sides in the case and not testing the finding of the trial tribunal against the evidence.
3. That, the District Land and Housing Tribunal erred in law and fact ~~for~~ delivering judgment in favour of the respondent by relying on assumptions and disregarded ownership document that proves the

appellant was allocated the disputed land by the Village Council on 14th October, 1999.

The appeal was heard by written submissions, both parties appeared in person.

Submitting on the 1st ground of appeal, the appellant was of the view that, the decision of the trial tribunal was signed by the secretary of the tribunal contrary to section 5(3) of the Ward Tribunal Act, Cap 206 RE 2002 which provided for chairperson's signature. By so signing, he argued that, the indication is that, the said secretary was also a member forming part of the composition of the tribunal against section 4 of the same Act which excludes him from membership of the tribunal. He contends that, the secretary has no authority to make decision, sign any document or even becoming a member of the tribunal. His participation in the proceedings and decision was illegal, so as the decision itself, he argued.

In reply to the above ground, the respondent was of the view that, the appeal is to be dismissed as it has no merit. He submitted that, the appellant is just intending to delay justice on part of the respondent. That, the trial tribunal was properly composed, hence, its decision is acceptable and conclusive under the law. He argued that the same was signed by the chairperson together with the general secretary as the law under section 5(3) of the Ward Tribunal Act requires.

Having gone through the submissions of the parties and the records at hand relation to this particular ground, I had to painstakingly peruse the records of the trial tribunal. In this ground, the appellant has faulted both the trial and the 1st appellate tribunal for deciding in favour of the respondent without considering the fact that the trial tribunal was not

properly composed owing to the participation of a secretary of the tribunal as a member thereof. I went through the records of the trial tribunal and found the name of Kilimile Yusuph, tribunal secretary at some point, has been included in the list of members on 11/8/2016 and 23/6/2016, and has signed on the judgement. On other dates the name of Ally M. Mnguyu has also been likewise included in the list of members and had signed. This practice has long been discouraged by the Court (see **Nada Qori versus Isaki Gilba, Misc. Land Appeal No.3 of 2013,**). Had it been that, the names of the two secretaries were merely included in the list of members with the indication that, they only had secretarial roles in the proceedings, this would have not posed any problem. This is because, removal of their names from the list, the composition of the trial tribunal could have remained intact and proper as there is no proof of their otherwise participation in the proceedings. Such inclusion alone would therefore, not affect the decision of the trial tribunal. However, Kilimile Yusuph having signed the judgement as a secretary is contrary to what the law provides as it signifies his participation in the decision making while not being a member.

Furthermore, when critically perusing the records of the trial tribunal, I found other serious irregularities apart from the one complained of by the appellant on the 1st ground of appeal of which this court cannot turn a blind eye to. The first one is the participation of Musa Awilo Mataka who signed as a chairperson on the judgement of 11/8/2016. The records show that the said person did not participate in the hearing of the case save only on 23/6/2016 when he was briefed if I may say so on the case before him. But later appeared on the judgment.

Secondly, the records show that, the case was chaired by four different chairperson and no reasons have been given as to what brought the

change of chairpersons severally. For example, Mr. Musa Awilo Mataka, chaired the proceedings on 11/8/2016 and 23/6/2016, Mr. Abdallah A. Mpayya on 11/02/2016 when claimants case was heard, Mr. Athuman Kaseka, on 25/2/2016, 24/2/2016, 31/3/2016, 12/5/2016, and 17/5/2016, all these dates the case was on hearing stage. Mr. Juma Kisigile who is not in the judgment heard the defense case as well as the plaintiff case as a chairperson. Worse still there are two more members appearing on the judgement who did not participate in the hearing (Sofia Kambangwa and Abdallah Rashid) while Hamza N. Bey who was participated in the hearing is not seen on the list of members who made the decision.

In my settled view, this is a serious irregularity which goes to the root of the decision itself. Definitely, the irregularities have vitiated the judgment of the trial tribunal and the same need to be reversed as stated under section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 which provides;-

"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."

In the event, I nullify the proceedings and decision of the Tambani Ward Tribunal as well as that of Mkuranga District Land and Housing Tribunal in appeal. Having decided so, I need not consider remaining grounds of appeal. The case file is remitted back to the trial tribunal for trial *de-novo*.

Each party will bear his own costs.



M.P. OPIYO,
JUDGE
3/3/2021