

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

AT DAR ES SALAAM

MISC. LAND APPEAL NO.59 OF 2022

(Arising from the District Land and Housing Tribunal for Mkuranga in Land Appeal No.30 of 2021, Originating from Land Application No.24 of 2021 from Vikindu Ward Tribunal)

ALLY NGULUGULU & OTHERS APPELLANTS

VERSUS

MOHAMED ALLY SALEHE1ST RESPONDENT

ATHUMANI MUSSA MFAKI 2ND RESPONDENT

JUDGMENT

Date of Last order: 11.10.2022

Date of Judgment: 13.10.2022

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Vikindu in Land Application No.24 of 2021 and arising from the District Land and Housing Tribunal for Mkuranga in Land Appeal No. 30 of 2021.

The material background facts to the dispute are briefly as follows; respondents instituted a case at Vikindu Ward Tribunal against the appellants. The respondents claimed that the appellants are trespassers,

they have invaded the land located Kazole Village believing that the owner was an Indian. The respondents complained that some of the appellants have constructed houses and cultivated cassavas inside the suit land. After a while the 1st respondent uprooted cassavas and demolished a house, thus, the respondents decided to lodge a case at the Ward Tribunal claiming that they are lawful owners of the suit land. The trial tribunal decided the matter in favour of the respondents and declared the appellants' trespassers and they ordered the appellants to vacate the suit land.

Dissatisfied, the appellants lodged an appeal at the District Land and Housing Tribunal for Mkuranga claiming that the trial tribunal erred in law for failure to analyse the evidence on record, the trial tribunal had no jurisdiction to determine the matter, failed to honour the customary boundary and the quorum of the trial tribunal was not met.

The District Land and Housing Tribunal decision did not amuse the appellants. They decided to challenge the appellate tribunal by way of appeal before this court on nine grounds of appeal as follows:-

- 1. That, the District Land and Housing Tribunal erred in law for holding the Ward Tribunal was properly constituted despite the fact that the secretary of the tribunal signed the judgment of the trial tribunal.*

2. That, the District Land and Housing Tribunal erred in law and fact for upholding the Ward Tribunal's decision by granting ownership to the respondents without considering that the 1st respondent was not the owner but rather a broker and 2nd respondent never appeared in Ward Tribunal to testify and prove his ownership.

When the appeal was called for hearing on 26th September, 2022, the appellants enlisted the legal service of Mr. Hamisi Kijazi, learned counsel and the respondent enjoyed the legal service of Ms. Martha, learned counsel. By the court's consent, the appellants filed their submission in chief on 30th September, 2022 and the respondents filed their reply on 6th October, 2022. The rejoinder was to be filed on 11th October, 2022, and Judgment was scheduled on 13th October, 2022. Pursuant thereto, a schedule for filing the submissions was duly confirmed by the appellant.

In his submission in support of the appeal, the appellant's counsel began to narrate the genesis of the matter which I am not going to reproduce in this appeal.

On the first ground, counsel for the appellants contended that the trial tribunal erred to include the Secretary who is not the member as required by the law, thus, the quorum was improperly constituted. Mr. Kijazi went on to submit that the question to ask is whether Sauleni M. Nyangalo who was the Secretary to Ward Tribunal was qualified to be a member of the

tribunal for purpose of establishing the validity of the quorum. To buttress his contention, he cited section 11 of the Land Disputes Courts Act Cap. 216 which reads together with section 4 (1) (a), (b), and (2) of the Ward Tribunal Act which state that:-

" ...each tribunal shall consist of not least that 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 Tribunal Act."

Mr. Kijazi went on to argue that the decision does not contain the names of the members of the Ward Tribunal participating in making the decision. The same does not have the signatures of the members of the Ward Tribunal participated in the decision-making process except for the chairman and secretary. He claimed that the decision does not have a list of members showing the gender participating in the decision-making process. He went on to submit that the Ward Tribunal is composed by four of eight members of the Ward Tribunal elected by the Committee and a Secretary in accordance with section 4 (1) of Cap. 206 is not a member. To support his submission he cited the case of **Twafika Nuru Chuma v Hamisi Kiuno Singa**, Misc. Land Appeal No. 37 of 2020 HC Land Division at Dar es Salaam (unreported).

On second grounds, the counsel for the appellants contended that the records of the trial tribunal are silent or do not show that the 1st respondent was permitted to appear before the trial tribunal. He added that yet again, the 1st respondent identified himself as a broker which means he is neither a relative nor a member of the household to the 2nd respondent. He went on to argue that the 1st respondent tendered a document before the Ward Tribunal on behalf of the 2nd respondent claiming the ownership without permission of the Ward Tribunal, hence in his view, the proceedings and decision of the trial tribunal of Vikiindu contain serious irregularities and substantial occasioned failure to justice to the parties and the same was contrary to the law. He faulted the appellate tribunal to deliberate on a decision originating from questionable proceedings and perverse decision.

On the strength of the above submissions, the appellants' counsel beckoned upon this court to quash and set aside the decisions of the trial tribunal.

In reply, on the first ground, the counsel for the respondents contended that the appellate tribunal was correct to dismiss the appeal since the Ward Tribunal quorum was correctly constituted. He referred this court to page 1 of the Ward Tribunal proceedings dated 23rd August, 2021, the quorum is signed by all members who participated in the hearing. He

added that section 11 of the Land Disputes Courts Act, Cap. 216 states the composition of the Ward Tribunal.

They went on to submit that the proceedings show that the quorum was well composed. He also referred this court to section 14 (1) of Cap. 216 which clearly states that the tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman. He added that the cited case of **Twafika Nuru** (supra) is in support of the respondents' case.

With respect to the second ground, the counsel contended that at the Ward Tribunal the appellants conceded that they are trespassers to the suit land since they failed to prove their ownership and thus the issue of ownership was resolved by the appellants themselves. He added that as a result there were no further disputes on ownership. he added that the law of evidence permits any person who is knowledgeable of the documents to tender the same therefore the averments that the 1st respondent tendering documents on behalf of the 2nd respondent was serious irregularities is a misconception. He added that the Evidence Act Cap. 6 does not apply at the Ward Tribunal.

The counsel for the respondents went on to submit that it is not mandatory for the part to appear before the Ward Tribunal and tender a document, it was his view that he may be represented by any person that is a

representative of a party to the dispute as per section 18 (2) of the Land Disputes Courts Act, Cap. 216. The counsel for the respondents continued to argue that the tribunal was correct in determining the matter in dispute in accordance to the law.

In conclusion, the counsel for the respondents beckoned upon this court to dismiss the appeal in its entirety with costs.

I have subjected the rival arguments by the learned counsel for the appellant to the serious scrutiny they deserve. Having so done, I think, the bone of contention between them hinges on the question *whether the appellant had good reasons to warrant this court to allow his appeal*. In my determination, I will combine the fifth and seventh grounds because they are intertwined. Except for the first, second, third, fourth, fifth, sixth and, eight grounds will be argued separately as they appear.

As to the first ground, the records, reveal that the secretary to the meeting was not listed as a member of the Ward Tribunal. I fully subscribe to the submission of the learned counsel for the respondent that the trial Tribunal quorum was correctly constituted. The trial proceedings dated 23rd August, 2021, show that the Chairman sat with four members and all of them participated in the hearing. Therefore the trial Tribunal complied with the requirement of the law as stated under section 4 (4) of the Ward Tribunal Act, Cap. 206. For ease of reference, I reproduce hereunder:-

“4 (4) The quorum at a sitting of the Tribunal shall be one-half of the total number of members.”

The above provision of the law requires the Chairman at the Ward Tribunal during the hearing of a case to sit with one-half of the total number of members. In the matter at hand, the Chairman sat with four members therefore, the trial Tribunal complied with the law. The Secretary to the tribunal was not among the members, he appended his signature to the Judgment by virtue of his position. Therefore, the same cannot be fatal and cannot vitiate the decision of the Court.

With respect to the second ground, I have scrutinized the Land Appeal No. 30 of 2021 records and noted that the 2nd respondent never appeared in Ward Tribunal to testify his ownership. They also complained that the 1st respondent was not the owner rather a broker. The records reveal that the appellants in their written submissions raised the said concerns. Reading the trial tribunal proceedings, it is clear that the trial Chairman determined the matter and noted that the appellants; Amina Said, Bi. Barubina Patrick and Ashura Hamisi admitted that they are trespassers. For the sake of clarity, I reproduce the testimony of Amina Said and Ashura Hamisi here under:

*“ **Amina Saidi:** Swali, mwenye shamba amejitokeza*

Jibu: kama wamejitokeza basi mimi nilikuwa najaribu tu, ila naomba nisaidiwe sehemu ya kukaa.

Ashura Hamisi; Swali,: *Mwenye shamba halali amejikozea.*

Jibu: Naomba nisaidiwe mimi nilikuwa sijui.

Barubina Patrick: *Jibu, Mimi sina sehemu ya kukaa nilivyoona wenzangu wanagawana maeneo nikaona na mimi nijipatie kaeneo.”*

From the above excerpt, it is clear that the appellants admitted that they are trespassers. Therefore, it was correct for the trial tribunal to declare the appellants trespassers regardless that the 2nd respondent did not show appearance. Consequently, I find nowhere to fault the finding of the both Tribunals because there was no any need to call the 2nd respondent to prove his case.

In light of the findings, it is vivid that the appellants' grounds of appeal are not tenable.

In the upshot, I proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 13th October, 2022.




A.Z.MGEYEKWA
JUDGE
13.10.2022

Judgment was delivered on 13th October, 2022 in the presence of Mr. Jonas Kilimba, counsel for the respondents also holding brief for Mr. Hamisi Kijazi, counsel for the appellant.




A.Z.MGEYEKWA
JUDGE
13.10.2022

Right of Appeal fully explained.