

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISCELLANEOUS LAND APPEAL NO. 29 OF 2021**

**MITHEMO S/O RAMAZANI SIMWINGA ..... APPELLANT**

**VERSUS**

**JOHN S/O RAMAZANI NZYUNGU ..... RESPONDENT**

(Appeal from the Judgment and Decree of the District Land and Housing tribunal Land

for Rukwa at Sumbawanga),

(J. Lwezaura, Chairperson)

Dated 7<sup>th</sup> Day of September, 2021

In

Land Appeal No. 7 of 2021

Date: 02/06 & 11/07/2022

**JUDGMENT**

**NKWABI, J.:**

This is a second appeal. The appellant was sued in the Ward Tribunal for Kipeta Ward in Land dispute No. 112 of 2020. Therein, the respondent was the applicant. The trial tribunal did not purchase the Appellant's defence that that piece of land measuring two acres the subject of the dispute was his property. He had defended that he was cultivating the piece of land since the year 1978 up to 1981. He went to college and thereafter got employed.

He came back in the year 2018 when he retired. It is then the dispute arose when he sent bricks for construction. His defence witness said it was the respondent in this appeal who was the owner of the land in dispute. Msampemba said it was the property of the Respondent in this appeal, that was said too, by Michael Mwanisenga Kilyamatundu said the land in dispute is the property of the Respondent in this appeal.

But the evidence of the respondent to the effect that that piece of land was allocated to him by the Village Land Allocating Committee in the year 1989 was supported by witnesses. The Ward Tribunal was of the considered opinion that the land in dispute is the property of the respondent namely, John Nzyungu (Nzungu).

The appellant unsuccessfully appealed to the District Land and Housing Tribunal. He was not satisfied with the decision of the first Appellate Tribunal. That dissatisfaction led him to lodge this appeal. He brought a petition of appeal which has seven grounds of appeal. They are:

1. That the learned Chairperson of the District Land and Housing Tribunal erred in law and fact by not considering that failure by the Respondent not to claim anywhere since 1975 over the plot.
2. That the learned Chairperson of the Appellate Tribunal erred in law and fact by failing completely to evaluate the evidence of me appellant which indicate from the time the Respondent to be trespass over my plot.
3. That the Chairperson of the District Land and Housing Tribunal Ward Tribunal erred in law and fact by not considering the time of recovery of land.
4. That the Chairperson of the District Land and Housing Tribunal Ward Tribunal erred in law and fact by not considering the failure of the Ward Tribunal at Kipeta to write gender of each member of the tribunal and hence in compliance.
5. That the Chairperson of the District Land and Housing Tribunal Ward Tribunal erred both in law and fact by not considering the failure of the Ward Tribunal at Kipeta not to sign each day they officiated the case hence reached wrong decision.

6. That, the Ward Tribunal at Kipeta was not properly constituted hence injustice decision and this was not observed at the First appellate Tribunal.
7. That, I was not fully treated as according to principles of natural justice.

At the hearing, both the appellant and the respondent appeared in person, unrepresented. The appellant was the first to take the stage. He argued that he inherited the shamba since 1975. He was also of the view that the Ward Tribunal was not properly constituted as there attended only three persons. He added, the witnesses of the respondents contradicted themselves on material matters especially on the use of land.

Further, he contended that the trial tribunal considered extraneous matters such as a tree. He would not stop there, he challenged the District Land and Housing Tribunal for it did not consider his grounds of appeal. Justice was not done to him, he added and prayed for justice.

Responding to the submissions of the appellant, the Respondent is of the firm view that justice was done in the District Land and Housing Tribunal. He is also of the firm opinion that the trial tribunal's judgment and proceedings are clear. He added, there are witnesses who testified in court. He prayed this appeal be dismissed.

The Appellant did not have much to say in his rejoinder. He insisted on the contradictions of the evidence of the respondent. He then prayed for justice.

I now proceed to deal with the complaint by the appellant that the composition of the Ward Tribunal was insufficient as it had only three members where as the fourth person in attendance was the Secretary to the Ward Tribunal. It was also his complaint that the gender of each member was not written. In his view, the anomalies vitiate the proceedings. Further, each member did not sign the proceedings. That is the gist of the 4<sup>th</sup> and 6<sup>th</sup> grounds of appeal. On his part, the respondent is of the firm stance that the Ward Tribunal was properly constituted and its proceedings are free from any blemish.

This complaint as to the quorum of the trial tribunal made by the appellant was not considered by the first appellate Tribunal. This being a second Appellate court is entitled to step into the shoes and determine this complaint. In this situation, the guiding principle is found under section 4 of the Ward Tribunal Act, Cap 206, R.E. 2019 which provides:

*4. Composition of the Tribunals*

*(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) ... NA*

*(2) ... NA*

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

*(4) ... NA*

In the proceedings dated 14/12/2020 the members are indicated as follows:

*WAJUMBE*

*24/12/2020*

*ANGELINA MLOWEZI*

*DONATO MASENGA*

*LOMANA SIMFUKWE*

*LOMANO MGAWWE*

In my view, the Ward Tribunal's quorum in hearing the land dispute was in strict compliance with subsection 3 of section 4 of the Ward Tribunals Act. Now, looking at the names of the Members, two would appear to be women. That they were not indicated as such, does not negate the fact. In fact, the appellant did not claim that Angelina Mlowezi and Lomana Simfukwe are not women. In the circumstances, the complaint against the quorum of members who sat in this case is misconceived and is dismissed. To that end, the 4<sup>th</sup> and 6<sup>th</sup> grounds of appeal crumble to the ground. Admittedly, on the verdict date, one Reonadi Maomboleo sat as a member while he had not attended any proceedings. However, one could remove him and the verdict remains intact. This is because, the decision was unanimous one.

I turn next to discuss the complaint of the appellant in respect of his being violated the rules of natural justice. This is the 7<sup>th</sup> ground of appeal which is couched that, "*I was not fully treated as according to principles of natural justice.*"

This ground of appeal was not covered in the appellant's submissions when he was arguing his appeal. Even in the first Appellate Tribunal, he did not submit on it as he merely said, let his grounds of appeal be considered.

Be that as it may, I have considered this complaint that the appellant was not heard. I find nothing of the sort. The appellant was heard and he brought witnesses who were also heard by the Trial Tribunal. In the circumstances, this complaint is unfounded and is dismissed.

The next ground of appeal for my determination is the 5<sup>th</sup> one. On this, the appellant complains that the Chairperson of the District Land and Housing Tribunal erred both in law and fact by not considering the failure of the Ward Tribunal at Kipeta not to sign each day they officiated the case hence reached wrong decision.

Without much ado, I have gone through the proceedings of the trial tribunal and I found that the members of the trial tribunal, signed against their names on each day they attended the hearing. Further, it is clear that the verdict of



the trial tribunal was signed by the Chairman as well as the secretary and they duly stamped the same. That is as per the original record. This ground is unmerited, it therefore fails.

I will now discuss the 2<sup>nd</sup> ground of appeal in conjunction with the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal. The 2<sup>nd</sup> ground of appeal runs thus; the learned Chairperson of the Appellate Tribunal erred in law and fact by failing completely to evaluate the evidence of me appellant which indicate from the time the Respondent to be trespass over my plot. The 1<sup>st</sup> ground complains that the respondent did not claim for the piece of land from the year 1975 while the 3<sup>rd</sup> ground of appeal laments on failure by the respondent to recover for the piece of land for quite a long time.

As indicated above, this was a unanimous decision to the effect that the respondent is the owner of the piece of land in dispute. Indeed, the witnesses of the appellant contradicted themselves. But the evidence of the respondent and that of his witnesses was clear that the piece of land the subject of the dispute was allocated to the respondent by the Village Land

Allocating Committee. In any way even if it were the property of the appellant, since he was away for quite a long time when he was employed only to come to claim for the land after that long time while the respondent was in quiet occupation of the land for a long period, the appellant cannot be heard to claim for it or trespass on it.

The above said, I have no reason to fault the lower tribunals in their concurrent decisions. The appeal is dismissed with costs.

It is so ordered.

**DATED** at **SUMBAWANGA** this 11<sup>th</sup> day of July, 2022



**J. F. NKWABI**  
**JUDGE**