

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

**MISC. LAND CASE APPEAL NO. 89 OF 2020**

*(From Appeal Judgment of District Land and Housing Tribunal for Mkuranga,  
in Land case Appeal No. 76 of 2019, originating from Land Case No. 30 of  
2017, of Mkamba Ward Tribunal)*

**KULWA SULTAN KWIHAMNO..... APPELLANT**

**VERSUS**

**ABDALLAH SELEMANI PUGA.....RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 19.04.2022*

*Date of Judgment: 17.05.2022*

**T. N. MWENEGOHA, J.**

At the center of the dispute is a land, measuring 4 acres, located at Kizomola Village, Muranga District, within Coast Region, valued at about 2,000, 000 Tanzania shillings. Mr. Kulwa Sultan Kwihamno, the appellant herein above, sought the assistance of the Mkamba Ward Tribunal, (hereinafter called the trial tribunal), to resolve the conflict between him and Abdallah Seleman Puga, the respondent above named.

In his claim against the respondent before the trial tribunal, the appellant insisted to have inherited the suit land from his clan. Either, it was further claimed by the appellant that, the respondent was given the land in question for use and was required to return it later, now he has refused and claiming the suit land belongs to him.

A full trial was conducted by the trial tribunal, then a decision was reached in favour of the respondent. Dissatisfied with the decision of the trial tribunal, the appellant unsuccessfully, filed an appeal before the District Land and Housing Tribunal for Mkuranga District, hereinafter called the 1<sup>st</sup> appellate Tribunal, vide Land case Appeal No. 76 of 2019. He is now before this court, seeking to overturn the decisions of the two tribunals, the trial and 1<sup>st</sup> appellate tribunal. His appeal lies on the following grounds; -

- 1. That, the 1<sup>st</sup> appellate tribunal erred in law and facts by holding that, trial tribunal determined the matter with requisite quorum while the trial tribunal lacked the required quorum;**
- 2. That, the 1<sup>st</sup> appellate tribunal erred in law and in facts to state that the trial tribunal was correct to decide that the respondent is entitled to own the land as having used the same since 2002;**
- 3. That, the trial tribunal erred in law and in fact by declaring the respondent to be the lawful owner of the suit land in absence of enough evidence to prove that.**

This appeal was heard ex-parte against the respondent owing to his no-appearance even after the summons to appeared was dully served through affixation to his place of residence. The appellant appeared in person.

Submitting on the 1<sup>st</sup> ground of appeal, the appellant argued that, the trial tribunal was not properly composed. The secretary of the tribunal, Juma M. Dindeka, participated in the decision while he is not a member. That,

this was decided in **Lucia Masengwa vs. Joseph Lutambi, Land Appeal No. 8 of 2020, High Court of Tanzania (unreported)** and also in **Nada Qori vs. Isaki Gilba, Misc. Land Appeal No. 2 of 2013**, where it was observed that:-

*“ A Secretary is not a Member of the Ward Tribunal but an employee of the Local Government Authority. In the circumstances, as the decision is signed by the secretary, the same is tantamount to dispute being determined by the secretary who is not a member of the Ward Tribunal and such decision is illegal”.*

He went on to submit that, there were also one member, by the name of Hadija S. Nundu who did not sign, meaning thereby she did not participate in the proceedings and decision. Therefore, out of 4 members, two of them are unqualified, that is Juma M. Dindeka and Hadija S. Nundu. That, if the two above named are removed from the list, there remain only two members and that is contrary to section 11 of the Land Disputes Courts Act, Cap 216 R. E. 2019. The said provision requires the Ward Tribunal while determining land matters to be composed by a minimum of 4 members. In that regard, the decision of the trial ward tribunal is illegal.

On the 2<sup>nd</sup> and 3<sup>rd</sup> grounds, the appellant consolidated them and argued that the suit land was once owned by Sultan Kwihamno since 1945 and later was inherited by his children, the appellant being one of them. The respondent was just given the said land for cultivating not ownership of the said land. Therefore, the doctrine of adverse possession does not work in his favour as decided by the trial tribunal.

Having gone through the submissions of the appellant and the records at hand, the task ahead of me is to determine as to whether the appeal at hand has merit or not.

Starting with the first ground, the appellant faulted the 1<sup>st</sup> appellate tribunal for upholding the decision of the trial Ward Tribunal of Mkamba Ward while the composition of the said trial tribunal is wanting, I went through the case file of the trial Ward Tribunal of Mkamba. In its decision dated 6<sup>th</sup>, November 2017, the following are listed as members who participated in the said decision; -

- 1. Mkambi Makaso----- Chairperson**
- 2. Juma M. Dindeka-----Secretary**
- 3. Zuhura B. Ndege-----Member**
- 4. Hadija S. Nundu-----Taarifa**

From this list, I find myself in line with the appellant, that Juma Dindeka, the secretary of the tribunal participated in the decision making. Either, the name also appears on the list of members who set to preside the matter on the 28<sup>th</sup> of August, 2017 when the matter was in hearing stage. This is unacceptable and it has so ruled in a number of authorities. That, a secretary of the Ward Tribunal is not a member of the Tribunal, rather he or she is a government employee. His involvement in the decision renders the same illegal, see **Lucia Masengwa vs. Joseph Lutambi and Nada Qori vs. Isaki Gilba**, (supra).

This fact alone is enough to invalidate the decision of the trial tribunal. The records also show, if we remove the secretary, Mr. Juma Dindeka, we remain with 3 members, one of them, Hadija S. Nundu who seems to be absent on the date when the decision was given. Hence, we remain with

only two members who are eligible to participate as members of the trial tribunal when the case was being decided. That is Mkambi Makaso, the Chairperson and Zuhura B. Ndege. The two cannot make any decision, as it will be illegal in the eyes of law. It is contrary to Section 11 of the Land Disputes Courts Act, Cap 216, R. E. 2019. For easy reference I will reproduce it as follows; -

*"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 No. 4 of the Ward Tribunals Act".*

For these reasons, I allow the 1<sup>st</sup> ground of appeal as it has merits. And that being my position, I see no need to discuss the remaining two ground of appeal, namely ground number 2 and 3 listed herein above. My decision is based on the truth that, the findings in the 1<sup>st</sup> ground of appeal are capable of disposing of the entire appeal to its end.

Eventually, this appeal allowed and the decisions of the two lower tribunal are quashed at their orders are set aside accordingly. Costs shall follow the event.

Ordered accordingly.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**17/05/2022**