

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 33 OF 2021

SOBINO KAPONGWA APPELLANT

VERSUS

AYUBU KAPUKUTU RESPONDENT

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for
Rukwa at Sumbawanga)

(J. Lwezaura, Chairperson)

Dated 13th day of April 2021

In

(Land Appeal No. 39 of 2020)

JUDGMENT

Date: 08/07 & 22/08/2022

NKWABI, J.:

The ward tribunal for Mkowe in Kalambo district decided a land dispute in favour of the respondent in this appeal who was the complainant therein. Its verdict dated 08/05/2020 goes:

"Kutokana na maelezo ya mdai kwamba aliazima shamba hilo kwa mda mrefu na hakuna mtu aliyewahi kujitokeza na kudai kwamba eneo hilo ni lake, na kisha akaendelea kulitumia kwa muda wa miaka 7 akaamua kulinunua akaendelea kulitumia mpaka ikafika mda wa miaka 38 ndipo

Sobino akajitokeza na kumwambia mdai amwonyeshe eneo alilonunua. Wajumbe wa Baraza wamechunguza na kutoa maoni yao kuwa eneo gombaniwa litabaki kuwa mikononi mwa mdai na si vinginevyo."

It was the contention of the respondent, in the trial tribunal, that he was let by Nikolausi Kapongwe to cultivate a piece of land in the year 1982. In the year 1990, Nikolousi sold the piece of land. Later a land which has the size of 40 acres was sold in addition to the prior piece of land to the respondent at T.shs 200,000/= price. It was in the year 2018 the appellant invaded the land of the respondent. The appellant on his side the sole evidence is that of Romano Msili who said she was married to the family of Leonce Kapongwa and they held pieces of land and has been there for a long time. The above evidence, albeit very brief, landed victory to the respondent.

On appeal, the first appellate tribunal confirmed the decision of the trial tribunal and dismissed the appellant's appeal for being devoid of merits. The appellant was aggrieved. Three grounds of appeal were preferred by the appellant to impugn the decision of the District Land and Housing Tribunal for Rukwa in its concurrent finding with the decision of the Ward Tribunal

for Mkowe in land dispute No. 8 of 2020. However, the 2nd and 3rd grounds of appeal were dropped by the counsel for the appellant and remained with one which is:

1. The Appellate Tribunal chairman and trial tribunal erred in law and fact by upholding the decision of ward tribunal while the quorum of ward tribunal was improperly constituted and proceedings of ward tribunal does not indicate number and the names of members with their signature who presided in hearing of the case.

It is for the above ground of appeal it is prayed for the appellant that the appeal be allowed with costs, judgment of the first appellate tribunal be quashed and set aside. The appellant be declared as the legal and rightful owner of the disputed land and any other order that this Court will deem proper and just to grant.

This appeal was heard by way of written submissions. Mr. Samwel Kipasha, learned advocate, drew the submission in support of the appeal for the appellant. The respondent, is unrepresented, as such he drew his reply submission by himself.

Expound the ground of appeal, Mr. Kipsha argued that the quorum of the members of the Ward Tribunal is a statutory creature. It is provided for under section 11 of the Land Dispute Courts Act No. 2 R.E. 2019 which regulate with mandatory effect on the issue of quorum of the ward tribunal and quoted it- thus:

"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, 1985."

Mr. Kipsha contended, out of six members, only two were women namely Deodat Kanja and Inonsensia Lyela. Since there are only two women members then the tribunal ceased to have power to try the matter hence rendered the whole proceedings not more than a nullity.

He thus prayed the appeal be allowed with costs. The judgments of the ward tribunal and first appellate tribunal be quashed and set aside. He did not end there, he enumerated the prayers as follows:

1. That this honourable be pleased to set aside the orders and judgment of the Mkowe ward Tribunal.
2. That this honourable Court be pleased to order a retrial to be conducted at the District Land and Housing Tribunal
3. That the costs of this appeal be borne by the respondent.
4. Any other remedy or reliefs that this Honourable Tribunal deems fit so to grant.

In his reply submission, the respondent asserted that the ward tribunal was duly constituted having six members whereas two of them were women. He prayed for the following orders:

1. The appeal be dismissed with costs.
2. The decision of ward tribunal and appellate tribunal be upheld.
3. Any other order (s) that this Court will deem proper and just to grant.

I have duly considered the submissions of both parties. In my view, section 4 of the Ward Tribunal Act, Cap 206, R.E. 2019 gives guidance in respect of the quorum at a sitting in a case where it is provided that:

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 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 were women as admitted by Mr. Kipesha. In the circumstances, the complaint against the quorum of members who sat in this case is misconceived and is dismissed. I accept the contention of the respondent that the ward tribunal in presiding over this matter, was duly constituted having a quorum of six members, where as two were women. It appears to me that Mr. Kipesha had confused the quorum of sitting members in a case and the composition of the Ward Tribunal. As such I dismiss with costs this appeal because it is lacking in merits.

It is so ordered.

DATED at **SUMBAWANGA** this 22nd day of August, 2022



J. F. NKWABI
JUDGE