

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT- LAND DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

Misc. LAND APPEAL No. 27 OF 2022

(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 85 of 2021 & originating from Bulinga Ward Tribunal in Land Case No. 5 of 2016)

FRANK SINDIRA APPELLANT

Versus

NYACHIRO MUMANJA RESPONDENT

JUDGMENT

27.03.2023 & 27.03.2023

Mtulya, J.:

This court in the precedent of **Nyangi Marwa Nyangi v. Mwita Petro**, Misc. Land Appeal No. 4 of 2022, citing the authorities of the Court of Appeal in **Edward Kubingwa v. Matrida A. Pima**, Civil Appeal No. 107 of 2018 and this court in **Anne Kisonge v. Said Mohamed**, Land Appeal No. 59 of 2009, had resolved at page 4 of the judgment that gender status of the ward tribunal members when resolving land disputes must be clearly displayed in the proceedings and decision of the tribunals.

In the present appeal, the record shows that **Mr. Frank Sindira** (the appellant) approached **Bulinga Ward Tribunal** (the

ward tribunal) on 2nd November 2016 and lodged **Land Case No. 5 of 2016** (the case) complaining that his farm was trespassed by **Nyachiro Mumanja** (the respondent) without any justifiable cause. The ward tribunal heard the dispute and finally on 25th January 2017 had decided in favor of the appellant. However, the ward tribunal in its proceedings was silent regarding gender status of its six (6) members who sat and determined the case. The decision aggrieved the respondent hence preferred **Land Appeal No. 85 of 2021** (the appeal) at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) complaining that the ward tribunal was improperly constituted and caused injustice to the parties.

After full hearing of the parties and registration of all relevant materials, the district tribunal had decided in favor of the respondent. However, at page 7 of the judgment the district tribunal had quashed the decision of the ward tribunal, which is the foundation of its decision in favor of the respondent. The district tribunal in its pronouncement stated that: *Baraza hili limeifuta hukumu ya Baraza la Kata.*

The appellant was dissatisfied with the decision of the district tribunal hence approached the legal services of **Mr.**

Evance Njau and instructed him to file and argue an appeal in this court. In this court, Mr. Njau had filed a total of four (4) reasons of appeal, briefly *viz*: first, failure of the ward tribunal's members to give their opinions before the decision was delivered; second, failure of the ward tribunal to consider its coram; third, failure of the district tribunal to consider bias decision of the ward tribunal; and finally, failure of the ward tribunal to consider evidences of the appellant.

Today afternoon the appeal was scheduled for hearing and both parties preferred legal services of Mr. Njau and Mr. Emmanuel Werema, learned counsels to contest in the appeal. When Mr. Njau was given the floor of this court, he decided to abandon three (3) grounds of appeal save for the second. In his opinion, the tribunal was not properly constituted as per requirement of the law enacted in section 11 of **Land Disputes Courts Act [Cap. 216 R.E 2019]** (the Act) which requires eight (8) members to whom three (3) must be women.

According to Mr. Njau, in the present case it is difficult to identify female members in the proceedings of the ward tribunal as their gender status is not reflected anywhere on the record. In persuading this court to decide in his favor, Mr. Njau stated

that gender status is necessary to be displayed on record as directed by this court in **Nyangi Marwa Nyangi v. Mwita Petro** (supra) and **Anne Kisunga v. Said Mohamed** (supra). In his opinion, Mr. Njau thinks that this court cannot see vivid breach of the law and let it remain on record hence prayed this court to set aside proceedings and quash all proceedings, orders and decisions emanated from fault procedures with costs.

Replying the submission, Mr. Werema conceded the fault and submitted that he cannot dispute the cited legal issue and the law may take its course. However, Mr. Werema opined that this court has to decline to order trial *de novo* as there are currently new amendments of laws regulating land disputes in ward tribunals. According to him, this court may let it to the parties to decide which course to follow to enjoy their rights to land. Regarding costs, Mr. Werema was surprised by Mr. Njau for pressing costs for irregularity that was caused by the ward tribunal.

I have perused the record of present case from when the case was initiated on 2nd November 2016 to 25th January 2017, when the decision of the ward tribunal was pronounced. The record shows that all six (6) members of the ward tribunal sat

and resolved the case without displaying their gender status from the beginning of the case to the decision date. The record just depicts names of the members, namely: Sadoke Mramba, Phalesi Mkomagi, Maiga Mag'ara, Kasoga Bendera, Happy Mnoko and Biasefu Masoro. From the indicated names, it is difficult to tell with certainty the gender status of each member of the tribunal. That is why this court had resolved, in **Anne Kisonge v. Said Mohamed** (supra) that:

...the names and gender of the members participating in a case in the ward tribunal must be shown in order to ascertain its composition as whether it is in compliance with the law.

The thinking of this court on the subject has remained undisturbed since 2009 and had received the support of the Court of Appeal in the precedent of **Edward Kubingwa V. Matrida A. Pima** (supra) which was pronounced on 5th November 2021. In the present case, the record is vivid at first glance that gender status was not recorded in the ward tribunal hence the established practice of this court and Court of Appeal must take its course. I have no reason to twist the thinking of the courts of record, even if there are good reasons to do so.

In the end, I set aside all proceedings and quash decisions and any orders of the lower tribunals for want of proper application of the law. Any party, who so wish to contest the disputed land, may lodge fresh and proper land dispute in a competent tribunal mandated to resolve land disputes in accordance to current land laws and procedures. I do so without costs as the fault was caused by the ward tribunal and blessed by the district tribunal.

Ordered accordingly.




F. H. Mtulya

Judge

27.03.2023

This judgment was delivered in Chambers under the Seal of this court in the presence of the appellant's learned counsel, **Mr. Evance Njau** and **Mr. Emmanuel Werema**, learned counsel for the respondent.


F. H. Mtulya

Judge

27.03.2023