

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL CASE NO. 225 OF 2023

(Arising out of the Judgment and Decree made by the District Land and Housing Tribunal for Kibaha at Kibaha in Land Appeal No. 54 of 2018 made on the 15th May, 2023 by Hon. Lung'wecha, Chairman)

JOSEPH RASHID DILUNGA APPELLANT

VERSUS

MWANAHAMISI HABIBU RESPONDENT

JUDGMENT

30/10/2023 & 15/11/2023

A. MSAFIRI, J.

This is a second appeal originating from Kerege Ward Tribunal (the trial Tribunal) and the District Land and Housing Tribunal for Kibaha (DLHT). Before the Ward Tribunal, the appellant instituted Shauri Na. 3 of 2018 claiming that the respondent has trespassed over a part of land measured 4.5 acres, which belong to Sigara Building Society. The decision was issued in favour of the respondent and it was declared that the suit is *Res Judicata*.

Dissatisfied with the said decision, the appellant filed an appeal before the District Land and Housing Tribunal for Kibaha, where, the

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Ward Tribunal's decision was upheld. Again, he made a second attempt through this appeal on the following grounds: -

- 1. That the Honourable Appellate Chairman erred in both Law and Fact for wrongly analyzing the Appellant's evidence and reached an erroneous finding of dismissing the Appellant's Land Appeal No. 54/2018 purportedly on ground that the Appellant had failed to substantiate all three grounds of Appeal.*
- 2. That the Honourable Appellate Chairman erred in both Law and Fact for failing to determine and make a pronouncement on each of the Grounds of Appeal and erroneously dismissing the Appeal without justifications.*
- 3. That the Honourable Appellate Chairman erred in both Law and Fact for failing to take into consideration that the Judgment of the Ward Tribunal of Kerege in Shauri No: 3/2018 was fatally tainted with illegalities and erroneously without justifications dismissed the Appellants appeal.*

The hearing of this appeal proceeded by way of written submissions, whereby the appellant was represented by Mr. Mashaka Ngole, learned advocate and the matter proceeded *ex-parte* against the respondent who never appeared in Court despite of being duly served via Mwananchi newspaper.

Arguing in support of the 1st ground of appeal, Mr. Ngole submitted that, at the trial Tribunal, the quorum was not constituted as

Alls.

per the requirement of Section 4(3) of the Ward Tribunal Act (Cap 216 R.E 2019). He stated that, on 22nd February, 2018, the members were nine (9) in number and one member never signed. On 30th January, 2023, when the judgment was composed, there were only two (2) members and they did not sign. On 15th February, 2018, members were nine (9) and they did not sign and the proceedings of 13th February, 2018, the members present were eight (8) but they did not sign.

Having examined the records of the trial Tribunal and upon consideration of the submissions made by the counsel for the appellant on the 1st ground of appeal, I wish to reproduce provision of Section 4 of the Ward Tribunals Act, Cap 206, which provides thus: -

4 (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) N/A

(2) N/A

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

(4) N/A

(emphasis added).

ALLS.

Guided by the above provision of the law, the Ward Tribunal is properly constituted if composed of not more than eight (8) or not less than four (4) members and the quorum at a sitting of a Tribunal is to be one half of the total number of members which is four (4) members.

The records of the Ward Tribunal shows that, on 30th January, 2018, when the matter was called for the first time before the Tribunal, only the secretary of the Tribunal one Galus Millinga was present. On 6th February, 2018, the chairperson and the secretary of the Tribunal together with six (6) members were listed in the quorum of the proceedings. Again on 13th February, 2018, the chairperson, secretary and six (6) members were listed in the quorum of the Ward Tribunal's proceedings.

In the case of **Adam Masebo vs Lines Nzunda**, Land Appeal No. 33 of 2021 High Court at Mbeya, it was held thus:-

"Composition of the ward tribunal is not a procedural aspect, rather a legal issue which touches jurisdiction and its authority when making a decision. The jurisdiction of the ward tribunal is only available, when it is duly constituted..."

Adls

Further in the case of **Michaely Kaulule vs Makala Nkongolo Mtoto**, Miscellaneous Land Appeal No. 28 of 2022, it was held that: -

"This court has repeatedly maintained that, improper composition of the coram in a Ward Tribunal when adjudicating land matters is a violation of the procedural law, which in turn renders the resulting decision and order(s) thereof a nullity."

Upon considering the above decisions, it is therefore my finding that the Kerege Ward Tribunal was not properly constituted when entertaining Shauri No.3 of 2018 which is the origin of this appeal. This follows that the proceedings and the decision of Kerege Ward Tribunal were nullity. Similarly, the appellate proceedings and the judgment in the DLHT were a nullity as they emanated from the nullity proceedings.

Since the issue of composition of the trial Tribunal suffices to dispose of the appeal, I shall not dwell into determining other grounds of appeal.

In the premises, I allow this appeal and hereby nullify the proceedings and set aside the judgments of the lower Tribunals i.e. proceedings and the decision of Kerege Ward Tribunal in Shauri No. 3/2018 and the proceedings and judgment of the District Land and Housing Tribunal of Kibaha in Land Appeal No. 54 of 2018. It is further

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directed that any party who wishes to pursue his or her right may file claims afresh in accordance with the current procedure and law. In consideration of the circumstances of the case, I make no orders to costs.

It is so ordered.

Right of further appeal explained.


A. MSAFIRI
JUDGE
15/11/2023

