

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPEAL NO. 51 OF 2022**

BETWEEN

NURDIN SAMWELI KAVILA APPELLANT

VERSUS

RENATHA M. MKINGA RESPONDENT

JUDGMENT

Date of last Order: 12/12/2022

Date of Judgment: 21/2/2022

A. MSAFIRI, J.

This appeal originates from a Land Dispute No. 25 of 2020 before Tumbi Ward Tribunal (herein as trial Tribunal), between the respondent (the then complainant) and the appellant (the then respondent), whereas the trial Tribunal decided in favour of the respondent herein. The appellant herein, being aggrieved with the said decision, lodged his appeal before the District Land and Housing Tribunal for Kibaha District at Kibaha (herein as the Appellate District Tribunal) in Land Appeal No. 156 of 2020, which again, ended in favour of the respondent, hence this second appeal as the appellant's move towards justice.

In his grievances, the appellant has filed a total of eight grounds of appeal to wit: *Adle*

1. That, the Honourable Chairperson rejected the appeal from the Ward Tribunal despite the fact that the Ward Tribunal had no jurisdiction to hear and determine the matter as it has no jurisdiction for failure to form its composition during hearing of the matter;
2. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the first ground of appeal from the Ward Tribunal that the Ward Tribunal erred in law and facts by not adequately evaluating and analyzing the evidences adduced by the appellant against the respondent's claims;
3. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the second ground of appeal from the Ward Tribunal that the Ward Tribunal erred in law and fact for not ordering the necessary and proper parties be joined in the appellant's claims;
4. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the third ground of appeal from the Ward Tribunal that the Honourable trial Tribunal erred in law by misapprehension and failure to evaluate properly evidence concerning the appellant's claims against the respondent on the plot of land;
5. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the third ground of appeal from the Ward Tribunal that the Ward Tribunal erred in law by arriving at its decision based on hearsay evidence;
6. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the fifth ground of appeal from the

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Ward Tribunal that the Ward Tribunal erred in law and fact by delivering the judgment which is contradictory;

7. That, the Hon. Chairperson erred both in law and facts for failure to decide in favour of the appellant on the sixth ground of appeal from the Ward Tribunal that the Ward Tribunal erred in law and fact for failure to frame issues and determining the same;
8. That, the Hon. Chairperson failed to interpret and apply the law and authorities relating to the matter at hand hence leading to miscarriage of justice on the part of the appellant.

By mutual consent of the parties and the order of the Court, the appeal was heard by way of written submissions. The submissions in support of the appeal were presented by Mr. Melkior Saul Sanga, learned counsel for the appellant, while the submissions in contesting the appeal were presented by the respondent who was unrepresented.

Having scrutinized the grounds of appeal stated hereinabove, written submissions in support and opposition, the records of the Court including those of both trial Tribunal and Appellate Tribunal, the crucial issue for determination is whether the instantaneous appeal has merit.

In determination of the merit of this appeal, it is my understanding that, this being the second appellate Court, it has to confine itself on point of laws and restrain from stepping into shoes of the trial Tribunal and 1st appellate Tribunal by assessing/analysis of the adduced evidence.

It has been the judicial position that the role of the second appellate Court is to determine matters of law only unless it is shown that the courts below

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considered matters they should not have considered or failed to consider matters they were supposed to consider. (See the case of **Johnbosco Rwabutti vs Sabiti Kainamula**, Miscellaneous Land Application No.63 of 2021, High Court Bukoba Registry).

Having observed on that position of law, then I will embark on determining the grounds of appeal set before me.

The 1st ground touches on the jurisdiction of the trial Tribunal. The appellant averred that the Tumbi Ward Tribunal a (trial Tribunal) had no jurisdiction to hear the matter as it was not properly composed during the trial.

In his submission, Mr. Sanga, counsel for the appellant was of the view that, at the time of the trial, the members of the Ward Tribunal were not fully constituted in accordance with the law. He cited the provision of Section 11 of the Land Disputes Courts Act, Cap. 206 R.E 2019.

In response on the issue of jurisdiction, the respondent contended that, the trial Tribunal was properly constituted and it was in line with Section 4 (3) of the Ward Tribunal Act Cap. 206 R.E 2019.

Section 11 of the Land Disputes Courts Act and section 4(c) of the Ward Tribunal Act provides that the composition of Ward Tribunal shall be not less than four nor more than eight members of whom three shall be women.

I agree with the submissions by the respondent that the gender requirement i.e. composition of three women among eight members is for the whole composition of the Tribunal and not the requirement of quorum during the hearing. During the hearing, Section 4 (3) of the Ward Tribunals Act provides

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for the requirement whereby the quorum at a sitting of a Tribunal have to be one half of the total number of members.

Going through the proceedings during the hearing of Shauri Na. 25 of 2020 before Tumbi Ward Tribunal, the quorum was as per the requirement of the law, hence the Tribunal had jurisdiction to entertain the dispute. For the above analysis, I find that the first ground of appeal has no merit and I dismiss it.

The 2nd and 4th grounds of appeal were consolidated and argued simultaneously. The appellant's counsel submitted that the Hon. Chairperson did not bother to re evaluate testimonies by all witnesses before coming to conclusion that the respondent is the legal owner of the disputed plot. That, the statement by the Hon. Chairperson is short and nowhere in the judgment is it shown that the same evaluated the whole statements from both sides and reach to a conclusion of concurring with findings of the lower Tribunal.

In response, the respondent contended that the Ward Tribunal did evaluate the evidence and satisfied itself that it was the respondent who first bought the disputed land from one Kulwa Nchimbi in 2007 and the trial Tribunal visited the land in dispute and found that the same was not one acre as the appellant has said but it was two acres as the respondent has claimed.

In determining these two grounds, I went through the impugned judgment of the District Tribunal which was the first appellate Court. I have also read the proceedings and decision of trial Tribunal.

I have to differ with the appellant's claims that the appellate District Tribunal failed to adequately evaluate and/or analyse the available evidence. *Alle*

It should be noted that the appellate Court can step into the shoes of the trial court and analyse the evidence when the same is satisfied that the trial Court failed to properly and adequately exercise its obligations of analysis of evidence which is/was adduced before it.

It is my view that in the appeal before the District Tribunal, the appellate Chairman went through the grounds of appeal and determined them basing on the available evidence. The Hon. appellate Chairman relied on the evidence adduced before the trial Tribunal. And as per the proceedings and decision of trial Tribunal, the evidence was thoroughly analysed and the trial Tribunal even visited the locus in quo and recorded the evidence thereon.

Hence, the appellate Chairman did not error by his findings which was relied on the evidence which was adduced during the trial and properly analysed before the trial Tribunal reaching its conclusion. I find that these two grounds of appeal on the analysis of evidence by two lower Courts are misconceived and has no merit.

The 3rd ground of appeal is that, the Hon. Appellate Chairman erred when he failed to decide in favor of the appellant that the trial Tribunal erred in law and fact for not ordering the necessary and proper parties to be joined in the appellant's claims.

The appellant in his submissions through his advocate, averred that since the respondent alleged that the land in dispute was brought from one Kulwa Nchimbi and that the same was sold to the respondent and the appellant as well, then the respondent was required to join the vendor in the matter. That, it was the duty of the Ward Tribunal to make sure that the vendor of

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the disputed plot is summoned as a witness or joined as a party to the matter.

The appellant believes that the role of Kulwa Nchimbi who sold the plot in dispute to the two parties was to prove as to whom he sold the disputed plot which could have assisted the Ward Tribunal to reach a better and reasoned conclusion.

In reply, the respondent submitted that, the Ward Tribunal was not bound to order additional defendants. That, the appellant himself, was supposed to file a third-party notice if he so wished as provided under the CPC but without going against rules governing administration of disputes under Ward Tribunals.

In rejoinder, the appellant, maintained his position and stated that this was not a matter to invoke a third party procedure and that the trial Tribunal was required to summon the person so as to assist in reaching to a fair decision.

In the impugned decision, i.e. the decision of the appellate District Court, the Hon. Chairman while determining this ground of appeal was of the view that, it was not mandatory to join one Kulwa Nchimbi as a party to the case. According to the circumstances of the dispute, what was important was the clear evidence to show who among the parties was the lawful purchaser of the disputed land. The appellate Chairman added that, any party to the dispute had an option if they wanted to, to summon the vendor Kulwa Nchimbi as a witness for their case.

I agree with this view of the Hon. Appellate Chairman. The trial Tribunal having heard the evidence from both parties and visited the locus in quo, *Alls.*

was satisfied of the available evidence and proceed to decide the case basing on the said evidence.

The trial Tribunal had no obligation to summon a witness for the party *suo motu* unless it is moved by the party or if the Tribunal sees it necessary to summon such a witness.

I further agree that, it is the obligation of each party to the suit to bring a witness to defend/build their case. So, if the appellant believed that one Kulwa Nchimbi was an important part in the case then he could have brought him as his witness.

I have gone through the records of the trial Tribunal and it shows that the appellant brought one witness only in defence of his case. The records are silent on whether the appellant attempted to bring Kulwa Nchimbi to testify and failed to do so for any reason, or whether he made a request to the Tribunal to summon Nchimbi and was denied. So, since the appellant claimed that Kulwa Nchimbi was the one who sold him the disputed land then he had an option to bring him to defend his case.

I also find this ground of appeal to have no merit I dismiss it.

The 5th, 6th and 8th grounds of appeal are similar to the 2nd and 4th grounds of appeal which are based on the failure of the lower Tribunals both the trial and appellate Tribunals on analysis of evidence which led to unfair and unjust decision against the appellant. I have already dealt with these claims when I was determining the 2nd and 4th grounds of appeal and my finding was that the lower Tribunals did analyse the available evidence and reached

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to a fair and just conclusion. I find that these grounds of appeal have no merit.

The 7th ground of appeal is the last one in which the appellant grievance is that the appellate District Tribunal erred when it failed to decide in favor of the appellant in his claims that the Ward Tribunal erred in law and fact for failure to frame issues and determining the same.

This ground of appeal need not take much of this Court's time. As correctly put by the Hon. appellate Chairman that the Ward Tribunals control their own proceedings and are not bound by legal procedures which are set and followed by other Courts.

As per Section 8 of the Ward Tribunals Act, the primary function of a Ward Tribunal is to secure peace and harmony in the area for which it is established by using mediation and endeavoring to obtain just and amicable settlement of disputes. Hence, the complaint by the appellant in this ground of appeal that the trial Tribunal failed to raise issues for determination are misplaced. This ground of appeal also lacks merit and is dismissed.

In the upshot, this appeal fails in its entirety and is hereby dismissed with costs.

It is so ordered.



A. MSAFIRI

JUDGE

21/02/2023