

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPEAL NO.82 OF 2021**

(Arising from the Judgment and Decree of the District Land and
Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No.
99 of 2020 originating from Ward Tribunal of Goba in Application
No.19 of 2020)

JASON R. RICHARD APPELLANT

VERSUS

JACKSON MWANGA RESPONDENT

JUDGMENT

Date of Last order: 11.10.2021

Date of Judgment: 15.10.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Goba in Application No.19 of 2020 and arising from the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 99 of 2020. The material background facts to the dispute are briefly as follows; Jason Richard, the appellant in this appeal lodged

Application No. 19 of 2020 at the Ward Tribunal for Goba claiming for ownership of a piece of land. He claimed that he bought from one Somoye Ndengu and paid Tshs. 2,800,000/= until 2019 when the Jackson Mwanga, the respondent came forward and claimed ownership over the suit land. The appellant's witness one Rehema Hassani testified to the effect that the appellant is the lawful owner since he bought the suit land from her grandmother.

On his side, Jackson Mwanga, claimed ownership over the suit land, he claimed that he bought the suit land in 2010 and cleared the suit land, and hired a caretaker but the appellant chased him away. He claimed that the appellant has his own piece of land. He claimed that his title was lost. The Executive Chairman testified in favour of the respondent that he possessed the suit land since 2014. The Ward Tribunal decided the matter in favour of the respondent.

Aggrieved, the appellant appealed to the District Land and Housing Tribunal for Kinondoni at Mwananyamala vide Land Appeal No.99 of 2020 where she complained that the trial tribunal was not properly constituted and was not chaired by a Chairman. He also complained that the trial tribunal did not consider evidence on record and erred in law to conclude that the respondent proved his case on the balance of probability. The

District Land and Housing Tribunal upheld the decision of the trial Tribunal and maintained that the respondent is the lawful owner of the suit land. The first appeal irritated the appellant. He thus appealed to this court through Land Appeal No. 93 of 2020 on two grounds of grievance, namely:-

- 1. That the appellate tribunal erred in law and fact by failing to consider that the trial Ward Tribunal of Goba in Land Application No.19 of 2020 was properly constituted, hence reaching an erroneous finding and conclusion.*
- 2. That the appellate tribunal erred in law and fact by failing to evaluate and consider the judgment and evidence given by the appellant in Land Application No.19/2020 of Ward Tribunal of Goba at Kinondoni District.*

When the appeal was called for hearing on 21st September, 2021, the appellant appeared in person, unrepresented and the respondent had the legal service of Mr. Selemani Matauka, learned counsel. The parties' contending arguments were, pursuant to the Court's order, presented by way of written submissions in conformity with the revised scheduling order drawn on 21st September, 2021. The appellant filed his submission in chief on 28th September, 2021 and the respondent Advocate filed a

reply on 6th October, 2021 and the appellant's Advocate filed a rejoinder on 11th October, 2021.

Getting off the ground was the appellant. He started with a brief background of the facts which led to the instant application which I am not going to reproduce in this application. On the first ground, he asserted that the appellate tribunal failed to consider that the honourable trial tribunal of Goba in Land Case No. 19 of 2020 was properly constituted as per section 11 of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He submitted that according to the proceedings at the trial tribunal members of the tribunal were; Method Rugimbana, Merisiana Mgangala, Flora Tesha, Deus ASEKUD, Shaban Idd, and Mwanaharusi Baraka. It was his view that the total members of the trial tribunal were six as per the requirement of law, section 11 of Cap.216.

It was the appellant's further submission that according to section 4 (3) of the Ward Tribunal Act, Cap.206 the quorum at a sitting of a tribunal shall be one-half of the total number of members. He added that the total number at the trial tribunal was six thus one-half of members were three members.

He lamented that the appellate tribunal erred in law and fact by stating that on 25th June, 2020 the appellant herein made his statement without

the quorum of members of the trial tribunal. He lamented that on that day it was not a hearing date. He referred this court to the trial tribunal proceedings and insisted that it was the date when the case was registered.

He contended that the trial tribunal erred in law and fact by stating that on 2nd July, 2020 the hearing at Ward Tribunal was presided by three members which were contrary to section 11 of Cap. 206. He claimed that the appellate tribunal failed to account for the total number of members who composed the Ward Tribunal of Goba in Land Case No.19 of 2020. Insisting he claimed that on 2nd July, 2020 the Ward Tribunal was properly composed.

On the second ground of appeal, he argued that the appellate tribunal failed to decide an appeal on merit since it did not consider the evidence adduced by the parties during the trial. He added that the trial tribunal considered all evidence adduced and tendered by the parties in dispute during the hearing and came up with fair and logical judgment in favour of the appellant. To support his contentions he referred this court to section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] and the case of **Salum Mabeyo v Moheamed Mabeyo** [1987] TLR 111. She submitted that at the trial tribunal the appellant testified to the effect that she bought

the disputed land in 2009 from Somoye Ndegue, deceased measuring 40 x 30 m at a price of Tshs. 2,800,000/=. The appellant said that he tendered a sale agreement.

The appellant continued to submit that the appellant's witnesses Rehema Hassan and Somoye Issa Selemani who are the granddaughters of Somoye Ndegue testified that the appellant purchase the disputed land from their grandmother for that reason the appellant claimed that he is the lawful owner of the suit land. The appellant contended that the respondent did not tender any document to prove his ownership over the disputed land rather he tendered an affidavit of loss of title deed which was not registered. He strongly submitted that the said loss of title deed was not a genuine document to support his ownership of the suit land. He added that the respondent did not mention the person who sold him the said suit land.

On the strength of the above, the appellant beckoned upon this court to uphold the judgment of the Ward Tribunal and decide in favour of the appellant with costs.

In his rebuttal submission, Mr. Matauka took a swipe at the appellant's submission. He also started by raising a legal issue to be considered by this court. He submitted that second is the second appeal arising from the

District Land and Housing Tribunal for Kinondoni at Mwanyamala whereas the respondent successfully challenged the decision of the trial tribunal. He submitted that the matter is a second appeal thus this court should deal with matters of law. He stated that the second ground is concerning facts, evaluation of evidence on record whereas this court can not interfere with the findings of the lower tribunal.

Fortifying his position, he referred this court to the cases of **Idrisa Omary v The Republic**, Criminal Appeal No. 554 of 2020 Court of Appeal of Tanzania at Dodoma, **Makubi Dogani v Ngondongo Maganga**, Civil Appeal No.78 of 2019, Court of Appeal of Tanzania at Bukoba and **Mohamed Juma @ Kodi v the Republic**, Criminal Appeal No. 273 of 2018, Court of Appeal at Mtwara (all unreported). He lamented that the composition of the trial tribunal was well dealt with and decided by the first appellate tribunal by nullifying and setting aside the whole proceedings of the trial tribunal.

Rebuking the applicant's sloppiness, Mr. Matauka contended that this court would have jurisdiction to determine the second ground if it could have been not a matter of fact. He argues that this second ground is concerning the evaluation of evidence which is purely a matter of facts. To buttress his submission he referred this court to the case of **Menald**

Wenela v the Director of Public Prosecutions, Criminal Appeal of Tanzania at Mbeya (unreported). Responding to the submission of the appellant' Advocate, it was his view that that the constitution of the trial tribunal was not well composed.

Reacting in respect of this matter, Mr. Matauka submitted that the law is clear about how the trial tribunal is required to be constituted when adjudicating the land disputes. He referred this court to section 11 of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He added that the constitution of members is different from the carom of sitting of the Ward Tribunal. Fortifying his position, he referred this court to section 4 of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. Mr. Matauka contended that the trial tribunal in several days the proceedings were conducted by less than four members without a Chairman and there is no indication of gender and without indicating the Chairman. To support his submission he referred this court to trial tribunal proceedings dated 5th October, 2020.

The learned counsel for the respondent further submitted that the date when the appellant testified was an important date to anticipate the whole issues concerning the dispute before the trial tribunal. He added that as a result, the Chairman proceeded with the hearing without listing the members who participated in the hearing on that date. To convince this

court he cited the case of **Daniel Chiyunji v Simon Chiloleti & Another**, Misc. Land Appeal No. 60 of 2013 HC at Dodoma (unreported). Insisting, he submitted that the trial tribunal was correct to nullify the Ward Tribunal proceedings and judgment.

The learned counsel for the respondent went on to argue that the issue of proper composition can be cured by the overriding principles. He stated that the purpose of the overriding principle is not to fix every kind of defect and omissions committed by the litigant. Fortifying his position he referred this court to the case of **Juma Busiya v Zonal Manager, South Tanzania Postal Corporation**, Civil Appeal No. 273 of 2020 Court of Appeal of Tanzania at Mbeya (unreported).

Concerning the second ground that the first Tribunal failed to evaluate the evidence on record. Mr. Matauka contended that the appellant complained that he is the lawful owner of the suit land. He distinguished the cited case of **Salaum Mateyo** (supra) that the cited case is concerning the right of occupancy and rent. He added that the appellate tribunal disposed of the entire appeal thus it could not evaluate the evidence which were recorded by the improper composition of the trial tribunal. The respondent complained that the appellant at the trial tribunal failed to prove his ownership. He claimed that the respondent's evidence

was heavier compared to the appellant's evidence. Supporting his position he cited the case of **Jeremia Busegano (Administrator of Estate of the late Agatha Busegano) v James Sokoli**, Land Appeal No.04 of 2020 HC at Mwanza (unreported), this Court cited with approval the case of **Hemedi Saidi v Mohamed Mbilu** TLR [1984] 113.

On the basis of the foregoing position, the learned counsel for the respondent has humbly implored this court to find no any scintilla of merit in the appeal by the appellant as a result it be pleased to dismiss it with the contempt it deserves with the usual consequences as to costs.

Rejoining, the appellant's Advocate reiterated his submission in chief. Stressing he contended that the appellant tendered a sale agreement to justify his ownership of the disputed property while the respondent did not tender any documentary evidence. He distinguished all the cited cases by the respondent's Advocate. Insisting that the trial tribunal composition was properly constituted.

I have taken into consideration all parties' submissions and gone through the trial Tribunal's records. I am now in a position to confront the two grounds of appeal on which the parties locking horns.

On the first ground, it is not in dispute that the dispute between the parties started at the Ward Tribunal of Goba in Land Application No.19 of

2020 following ownership of land. Through their written submissions, parties are locking horns on the issue constitution of the Ward Tribunal members and quorum of Ward Tribunal members. The composition of Ward Tribunal members is clearly stated under section 4 (1) of the Ward Tribunal Act, Cap. 206 as follows:-

"4 (1) Every Tribunal shall consist of- (a) not less than four nor more than eight members elected by the Ward Committee from amongst, list of names of persons resident in the Ward compiled in the prescribed manner."

When it comes to hearing of a case the quorum of Ward Tribunal is required to sit with not less than 4 members including the Chairman as stipulated under section 4 (4) of the ward Tribunal Act, Cap. 206. It reads:-

"4 (4) The quorum at a sitting of the Tribunal shall be one-half of the total number of members."

Applying the above provision of the law, the Chairman was required to sit with not less than four members including the Chairman. The respondent in his submission insisted that it was improper for the Chairman to sit with members below four members. The law requires the

Chairman at the Ward Tribunal during the hearing to sit with one-half of the total number of members. Guided by the above provision of the law, the Chairman can sit with one-half of the trial members. However, that was not the case in the matter at hand. The Chairman at the trial tribunal proceeded with hearing the case with a different set of assessors. For example on 02nd July, 2020 when the defendant argued his case, members were Method Rugimbana, Merisiana Mpangala, and Shaban Idd on 3rd July, 2020 when the matter was called for hearing questions from assessors the set of assessors was as follows; Method Rugimbana, Merisiana Mpangala, Flora Tesha and Deus Fidelsi. Flora Tesha and Deus Fidelsi were a new members. On 6th August, 2020 a set of assessors was Method Rugimbana, Merisiana Mpangala, Mwanaharusi Baraka and Deus fidelis.

As rightly pointed out by Mr. Matauka, on 25th July, 2020, the applicant commenced and the Chairman proceeded with hearing the applicant's case in the absence of the members. It is plain, in the instant case, on 25th July, 2020, and other days the trial Chairman proceeded with trial in the absence of members. Would it had been that the Chairman at the beginning of hearing the case sat with two members then on the following days the hearing proceeded in absence of members then this would have

not been a problem. Section 23 (1) and (3) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] provides that:-

" 23. - (1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors. The Land Disputes Courts Act [CAP. 216 R.E. 2019] 13.

(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence."

Guided by the above provision of the law in the instant appeal, I find that it was not proper for the Chairman to proceed with hearing on the first day of hearing the case in the absence of members. he was supposed to sit with at least two members. I therefore fully subscribe to the appellate tribunal Chairman ruling that on the date when the appellant testified was an important date to anticipate the whole issues concerning the dispute before the trial tribunal. I am in accord with the learned counsel for the respondent that it was crucial for the Chairman to list the

names of the tribunal members. Otherwise, it is impossible to know if the members who have participated in hearing the case are the same members who decided the dispute. See the case of **Daniel Chiyunji** (supra).

In a recent case of **B.R.Shindika t/a Stella Secondary School v Kihonda Pitsa Makaroni Industries Ltd**, Civil Appeal No.128 of 2017, the Court of Appeal cited with approval the case of **Ameir Mbarak and Another v Edgar Kahwili**, Civil Appeal No.154 of 2015 (unreported), the court was confronted with a situation where the assessors were not present at different stages of the trial. In the case of B. R. Shindika (supra) the Court of Appeal of Tanzania held that:-

"... trial commences with a certain set of assessors, no changes are allowed or even abandonment of those who were in the conduct of the trial. In other words, cases tried with the aid of assessors had to be concluded with the same set of assessors..."

Applying the above holding of the case, I am in my view that the same applies in the case at hand that the quorum of members who participated in hearing the case from the commencement of the case had to be the same until the end of hearing the case.

Having reached this finding of the appeal, I deem it superfluous to deal with the remaining ground as by so doing amounts to deal with a sterile exercise.

That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with the findings of the District Land and Housing Tribunal for Temeke. Therefore, I proceed to dismiss the appeal without costs.

In the upshot of it all, I find this appeal wanting in merits and dismiss it in its entirety without costs.

Order accordingly.

DATED at Dar es Salaam this 15th October, 2021.




A.Z.MGEYEKWA
JUDGE
15.10.2021

Judgment delivered on 15th October, 2021 in the presence of the appellant and Mr. Matauku, learned counsel for the respondent.




A.Z.MGEYEKWA
JUDGE
15.10.2021

Right to appeal full explained.