

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

MISC. LAND APPEAL NO. 38 OF 2022

*(Arising from Land Appeal No. 61 of 2020 District Land and Housing Tribunal for Muleba
Originating from Land Case No. 17 of 2020 Kamachumu Ward Tribunal)*

NGEMELA LONGINO..... APPELLANT

VERSUS

REVERIANA AMANDUS..... RESPONDENT

JUDGMENT

13th and 17th March, 2023

BANZI, J.:

The Appellant lost the appeal at Muleba District Land and Housing Tribunal (“the appellate tribunal”) where he appealed against the decision of Kamachumu Ward Tribunal (“the trial tribunal”) which ordered the Respondent to continue with taking care of the disputed land for one, Rutechura Amandus until the latter attains the majority age. The appeal to the appellate tribunal was struck for being incompetent on the reason that, the grounds that were raised by the Appellant did not qualify to be termed as grounds of appeal.

Aggrieved by that decision, the Appellant has approached this Court with prayers to quash the proceedings and set aside the decision of the

appellate tribunal and declare him as the legal owner of the suit land. He was marshalled with four grounds but for obvious reason, I shall not reproduce them.

When the appeal was called for hearing, the parties appeared in person, unrepresented. Before the hearing commenced, the Court raised *suo moto* an issue of the propriety of composition of the trial tribunal regarding absence of names of members who presided over the matter. Being lay persons, parties had nothing useful to comment. Both were of the view that, if there was any irregularity, the same was caused by the tribunal and they decided to leave for the Court to decide.

Having thoroughly examined the record of the trial tribunal, the main issue before this Court for determination is whether the trial tribunal was properly constituted.

It is worthwhile noting here that, according to section 11 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] ("the Land Disputes Courts Act") the ward tribunal is duly constituted if it is composed of not less than four and not more than eight members of whom three shall be women. It is also prudent to underscore that, in order to ascertain if the ward tribunal is properly constituted, the names of members who presided over the matter

on each date must be disclosed in the proceedings. Short of that, it is an error which affect the jurisdiction of the said tribunal.

In the matter at hand, the proceedings of the trial tribunal indicate that on 3rd March, 2020 when the Respondent presented her claim before the tribunal, four names were listed as presiding members. On 5th March, 2020 hearing commenced and the tribunal heard the evidence from the Appellant and two witnesses of the Respondent. However, the names of members who presided over on that date were not recorded. The same irregularity occurred on the subsequent dates *i.e.*, on 10th March, 2020 when the tribunal received the evidence of four witnesses of the Respondent and 17th March, 2020 when two witnesses of the Appellant gave their testimony. Also, on 19th March, 2020 when the tribunal visited the locus in quo, although there was no order for such visit, there were 18 people who attended there. However, among the attendees, there is no any member who was recorded to have attended that visiting. Equally, there was no coram of members who presided over on that day.

From what had transpired before the trial tribunal, it is apparent that, the proceedings are silent on who presided over when the Appellant, the Respondent and their witnesses adduced their testimonies before the tribunal. In the absence of names of members in the proceedings, it is

difficult to ascertain if the persons whose names appeared in the judgment are the very ones who presided over during the reception of evidence. It has been held in a number of cases that on every date the tribunal convenes for adjudicating the matter, the names of the members who presided over the matter should be listed and it is desirable that they should sign to authenticate their attendance. Remarking of the effect of section 11 of the Land Disputes Courts Act, this Court in the case of **Ane Kisunga v. Saidi Mohamed**, Land Appeal No. 59 of 2009 HC Land Division (unreported) had the following to say:

*"My interpretation of the cited law is 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 to whether it is in compliance with the law. **Those members who participated during the trial, their names and gender must be recorded on Coram on each day the trial takes place up to the stage of Judgment.** Failure to follow proper procedure it is difficult to know as in this instant case, the members who participated to compose the Judgment were the same as those who appeared during trial."* (Emphasis supplied).

In another case of **Francis Kazimoto v. Daglas Mkunda**, Misc. Land Appeal No. 123 of 2016 HC Land Division (unreported) it was stated that:

"The jurisdiction of the ward tribunal is only available if it is duly constituted. It would follow therefore that, the omission to reflect the names of the persons who constituted the ward tribunal during trial is an error which affects the jurisdiction of the same. It is no doubt an incurable irregularity which vitiates the judgment and proceedings of the trial tribunal."
(Emphasis added).

From the cited case above, it is obvious that failure to list names of members who presided over the matter on each date when the matter is called for hearing or any order, is a fatal irregularity which vitiates the proceedings and the decision thereafter. Since the names of members of the tribunal who presided over the matter on 05/03/2020, 10/03/2020, 17/03/2020 and 19/03/2020 were not disclosed, the proceedings and the decision were a nullity. Since the decision of the trial tribunal was a nullity, there was no competent appeal before the appellate tribunal. Whatever transpired in the appellate tribunal was also a nullity and cannot be left to stand. This irregularity cannot be served by section 45 of the Land Disputes Courts Act because it hinges on the issue jurisdiction of the tribunal.

Consequently, I invoke revisional powers under section 43 (1) (b) of the Land Disputes Courts Act to nullify the proceedings, quash the judgments and set aside the orders and decree of both trial and appellate tribunals.

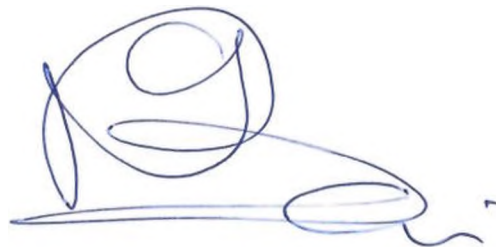
Taking into consideration the current position of the law on adjudicating land matters, any party who is still interested may file a fresh suit before a competent tribunal. In the circumstances, each party shall bear its own costs.

It is accordingly ordered.



I. K. BANZI
JUDGE
17/03/2023

Delivered this 17th day of March, 2023 in the presence of the Appellant and the Respondent both in person.



I. K. BANZI
JUDGE
17/03/2023