

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 13 OF 2008
(From the decision of the District Land and Housing
Tribunal of Iringa District at Iringa in Land Case Appeal
No. 9 of 2008 and Original Ward Tribunal
of Ilala Ward in Application No. ILA/MK/0008 of 2008)

ELIZABETH NINDI ----- APPELLANT

VERSUS

MAMA SAMBAGE ----- RESPONDENT

01/12/2015 & 15/12/2015

JUDGMENT

KIHWELO, J.

This is an appeal against the decision of the District Land and Housing Tribunal of Iringa in Land Case Appeal No. 9 of 2008 which dismissed the decision of the Ilala Ward Tribunal in Land Disputes No. ILA/MK/0008.

The brief background to this appeal is that the appellant filed a complaint before the Ilala Ward Tribunal on 4th December, 2007 with reference No. ILA/MK/0008 complaining that the respondent had trespassed the suit premises since October, 2007. It is on record that the appellant alleged that the suit premise was bought by herself and her late husband while there was a dilapidated building numbered 110C way back in 1980 and that the same was purchased from one Andrew Nindi. However, the said dilapidated building was washed away by Elnino rains as such the appellant and her husband had to build a new foundation for the house which was still there until when the respondent trespassed in 1980.

The respondent on her part testified at the Ward Tribunal that the suit premise was bought by her late husband from one Chestino Makasi and that the same was bought in 1984 and during the purchase of the suit land there was a bare plot. The respondent further testified that they bought the suit land for TShs. 25,000/- and later she sold in 2006 to one person by the name of Kasike for TShs. 110,000/-.

Upon full trial of the matter and listening to both the appellant's and the respondent's witnesses the Ward Tribunal handed down the judgment by awarding the suit land to the appellant. Dissatisfied by the decision of the Ward Tribunal the

respondent preferred an appeal before the District Land and Housing Tribunal which upon listening to the parties and their respective witnesses (and in particular the Land Surveyor from Iringa Municipality who testified that the suit land was surveyed in 1982 as Plot No. 110 Block CC Mkwawa, a survey plan was issued in 1982 and the same was allocated to Chestino Makasi on 20th May, 1983) dismissed the appeal and pronounced that the suit land belongs to Chestino Makasi who was allocated the suit land, was paying land rent and was issued with a building permit. In essence the District Land and Housing Tribunal found that none of the parties has right in the suit land. It is upon those circumstances that the appellant filed the instant appeal before this Court with three main grounds which may be crystallized as follows:-

- 1. The appellate tribunal erred in deciding in favour of a third party who was a stranger to the case.*
- 2. That given the strength of evidence produced by the appellant the appellate tribunal erred in not finding that the appellant was the owner in occupation of the suit land.*
- 3. The appellate tribunal erred when it failed to address the discrepancies found in the respondent's case which went to the root of her case.*

When the matter came for hearing of the appeal the appellant was represented by Mr. Edson Rwechungura, learned counsel while the respondent was under the services of Mr. Alfred Kingwe, learned

counsel. Upon the directive of the Court the appeal was disposed through written submissions.

Mr. Rwechungura spiritedly argued that the appellate tribunal erroneously pronounced judgment in favour of a stranger to the suit contrary to the dictates of the law. He cited a number of authorities to buttress his argument. These are **Mariam Dorina & Another V Kisha Lugamalila**, PC Civil Appeal No. 31 of 2003, **Niko Insurance & Others V Hassan Kombo**, Miscellaneous Civil Case No. 94 of 2006 and **Munifu Abdallah V Valerian Bamanya & Another**, Civil Appeal No. 122 of 2006 (both unreported) and further alleged that the manner upon which the respondent acquired the suit land suggests fraud and he cited the case of **Godfrey Sayi V Mary Mndolwa**, Civil Appeal No. 44 of 2006 (unreported) to support this line of argument and he finally prayed that the appeal should be upheld.

In reply Mr. Kingwe, argued that it is irresistible fact that the said Chestino Makasi was not directly party to the suit but given the strength of the evidence on record it is not disputed that he is the legitimate owner of the suit land and that is why he executed an agreement with Venance Zacharia Sambage.

Mr. Kingwe in essence he valiantly argued that the respondent and one Chestino Makasi entered a legally binding agreement on 23rd October, 1984 by virtue of Section 10 of the Law of Contract Act, Cap 345 RE 2002. He finally prayed that the appeal be dismissed with costs.

Upon careful and further perusal of the court records I have come across some glaring irregularities which both the District Land and Housing Tribunal and the Ward Tribunal overlooked in the course of the conduct of this matter.

A cursory perusal of the records of the Ward Tribunal reveals that the tribunal met on the following dates 4th December, 2007, 11th December, 2007, 27th December, 2007, 10th January, 2008, 5th February, 2008 and finally the judgment was pronounced on 26th February, 2006. Surprisingly none of the dates indicated above the quorum of the tribunal was shown. As if that is not enough even during the handing over of the judgment it is only the signature and the name of the Chairman is indicated.

What is conspicuously clear from the records of the Ward Tribunal is that inside the cover page of the exercise book of the records there appears names of the members of the tribunal, their qualifications and their respective signatures. However it is a

requirement of the law in particular Section 11 of the Land Disputes Courts Act, Cap 216 RE 2002 that the quorum of the Ward Tribunal has to be four in the minimum when the tribunal is determining the matter at the trial. Although the number indicated above is five but the serious problem is that the names have not been indicated in any of the dates when the tribunal met which leaves this Court with the difficult puzzle to piece together on whether the tribunal sat with the required quorum at every sitting or not.

This Court has made it clear in the case of **Julius S. Mshai V Daud Mlumba**, Miscellaneous Land Application No. 41 of 2008, High Court of Tanzania at Dodoma (unreported) where the Court emphasized the need to have composition of members appear at every sitting of the tribunal. This is to enable the Court establish whether there was the requisite quorum or not.

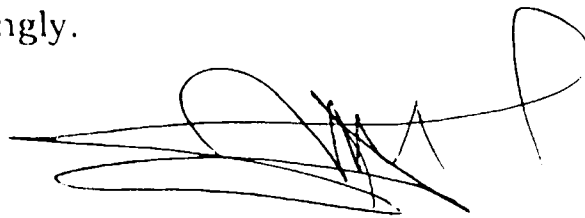
In the light of the discernible irregularity the proceedings of the Ward Tribunal were in essence a nullity and accordingly the proceedings of the District Land and Housing Tribunal are equally a nullity.

I thus proceed to quash the decision and the proceedings of the District Land and Housing Tribunal and that of the Ward Tribunal

and order that a *trial de novo* be conducted preferably but not necessarily before a different set of members.

Owing to the above irregularity no order as to costs is awarded as such each party to bear their own costs.

Ordered accordingly.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

P. F. KIHWELO

JUDGE

15/12/2015