

IN THE COURT OF APPEAL OF TANZANIA

AT MUSOMA

(CORAM: SEHEL, J.A., FIKIRINI, J.A. And ISSA, J.A.)

CIVIL APPEAL NO. 520 OF 2021

MWITA NCHAMA..... APPELLANT

VERSUS

ABUDU HAMIS MOHAMED..... RESPONDENT

(Appeal from the Judgment of the High Court of Tanzania at Musoma)

(Kisanya, J.)

dated the 30th day of September, 2020

in

Land Appeal No. 62 of 2020

.....

JUDGMENT OF THE COURT

3rd & 8th May, 2024

SEHEL, J.A.:

This is a third appeal by Mwita Nchama, the appellant. It originates from Buswahili Ward Tribunal (the Ward Tribunal) where, in 2018, the appellant instituted a claim against the respondent. He alleged that Abudu Hamis Mohamed, the respondent, uprooted his sisal plants which he planted on his piece of land measuring 124 meters long and 188 meters width (the disputed property) situated at Mlimani hamlet in Kongoto village within Butiama District in Mara Region. The respondent disputed the claim.

At the trial before the Ward Tribunal, the appellant asserted that he was given the disputed property by his grandmother, one Bhoke Gusuhi. He alleged that the said Bhoke Gusuhi was allocated the disputed property by the village authority in 1974. To that effect, he tendered a letter of allocation.

On the other hand, the respondent alleged that he inherited the disputed property from his father who had been occupying it since 1974. After the demise of his father, the respondent continued to use it without any interruptions and/or disturbance until when the appellant began laying claim over it.

The Buswahili Ward Tribunal found and held that the evidence before it established the respondent was the lawful owner of the disputed property which it observed, he has been legally occupying it for over forty-five (45) years without any disturbance. It, therefore, dismissed the appellant's claim. That decision aggrieved the appellant who appealed to the the District Land and Housing Tribunal (the DLHT) for Mara at Musoma. That DLHT upheld the decision of the Ward Tribunal. Once again, that dissatisfied the appellant. He unsuccessfully appealed to the High Court of Tanzania at Musoma (the High Court), hence, this third appeal to the Court.

The appellant filed a memorandum of appeal comprised of the following two grounds:

"1. That, the High Court erred in law to affirm the decision of first trial court while the tribunal was not properly constituted in determining the land complaint lodged before it.

2. That, since the opinion of assessors of the DLTH were not in accordance to the law, its decision was illegal."

When the appeal was scheduled for hearing on 3rd May 2024, both the appellant and the respondent appeared in person, unrepresented. Since they are not well versed with the law, they had nothing much to submit on the appeal.

In essence, the appellant repeated his grounds of appeal, while, the respondent supported the findings of the High Court. When probed by the Court as to whether the assessors read their opinions to the parties, the appellant replied that he does not recall what transpired before the DLHT.

The respondent argued the High Court rightly held that the Ward Tribunal was properly constituted as the dispute was heard and determined by four members of the Ward Tribunal of whom two were men and the other two were women. Responding to the second ground,

he simply submitted that the decision was proper and legally binding. He therefore urged the Court to dismiss the appeal. In rejoinder, the appellant submitted that he was not satisfied with the decision of the High Court thus prompted him to lodge the present appeal.

Having heard the parties' oral submissions, we find that two issues arise for our deliberations. **One**, whether the Ward Tribunal was properly constituted and **two**, whether the assessors who sat with the Chairperson in the DLHT to hear the appeal gave their opinions contrary to the dictates of the law.

Starting with the first issue that whether the Ward Tribunal was properly constituted. Section 11 of the Land Disputes Courts Act (henceforth "the LDCA") provides for the composition of the Ward Tribunal members. It provides:

"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."

It follows from the above that, the Ward Committee established under section 4 of the Ward Tribunals Act (henceforth "the WTA") shall elect members to compose a Ward Tribunal. The number of members to

be elected must be not less than four but not more than eight of whom three shall be women.

It be noted that a quorum for each sitting of the Ward Tribunal is provided under section 4 (3) of the WTA that half of its members should be present to form the quorum. This means that if the Ward Tribunal is comprised of eight members, the quorum of such Ward Tribunal is four. Further, out of these four members, at least one of them shall be a woman. This is clearly stipulated under section 14 (3) of the WTA.

In the present appeal, the record bears out that the Buswahili Ward Tribunal had eight members, namely, Slyvester M. Muruga, Nashon Kisyeri, Magira Chacha, Adiventina Magabe, Pili Mwita, Wilbert, Wilbert Itogoro, Ghati Chacha and Werema Ntelele. It is further reflected in the proceedings of the Ward Tribunal that the appellant's claim was heard and determined by four members of Buswahili Ward Tribunal. Out of these four members, two were women, namely, Adiventina Magabe and Ghati Chacha and the other two were men, namely, Slyvester M. Muruga and Werema Ntelele. With this evidence on the record, we find that the High Court rightly held that the Ward Tribunal was properly constituted. Accordingly, we find no merit on the first ground of appeal. We dismiss it.

We now turn to the second issue that whether the assessors in the DLHT gave their opinions contrary to the dictates of the law. Section 23 (1) and (2) of the LDCA provides that:

*"(1) The District Land and Housing Tribunal established under section 22 **shall be composed of one Chairman and not less than two assessors.***

*(2) The District Land and Housing Tribunal **shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.***
[Emphasis supplied].

The above provision of the law is crystal clear that the DLHT is properly constituted when a Chairperson sits with not less than two assessors. The role of the assessors is to give out their opinions before the Chairperson reaches his decision. On how should the assessors give out their opinions, regulation 19 (2) of the Land Disputes Courts (the District Land and Housing Tribunal (Regulations), Government Notice Number 174 of 2003 (henceforth "the G.N. No. 174 of 2003") provides that:

"19 (2) Notwithstanding sub-regulation (1), the Chairman shall, before making his judgment,

require every assessor present at the conclusion of the hearing to give his opinion in writing and the assessors may give his opinion in Kiswahili."

Therefore, the law requires that, at the conclusion of the trial, the Chairperson shall to require every assessor present at the conclusion of the hearing to give his opinion in writing before composing his judgment and such opinion may be given in Kiswahili language.

Consisted with the above, we said in the case of **Tubone Mwambeta v. Mbeya City Council** (Civil Appeal 287 of 2017) [2018] TZCA 392 (3 December 2018) that:

"... where the trial has to be conducted with the aid of the assessors ... they must actively and effectively participate in the proceedings so as to make meaningful their role of giving their opinion before the judgment is composed We are increasingly of the considered view that, since Regulation 19 (2) of the Regulations requires every assessor present at the trial at the conclusion of the hearing to give his opinion in writing, such opinion must be availed in the presence of the parties so as to enable them to know the nature of the opinion and whether or not such opinion has been considered by the Chairman in the final verdict."

The law under section 24 of the LDCA further provides that, after the assessors have given their opinions, although the Chairperson is not bound by their opinions, he is required to take into account those opinions in the course of writing his judgment. Where the Chairperson disagrees with the opinions of the assessors, he must give his reasons for such disagreement. For ease of reference, we reproduce hereunder section 24 of the LDCA that reads:

"In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion."

In the present appeal, we have gathered from the original proceedings of the DLHT that the Chairperson of the DLHT sat with two assessors, namely, Babere and Swagarya. On 20th February, 2020, after oral hearing of the appeal, the Chairperson adjourned the matter to 13th February, 2020 for the assessors to give out their opinions to the parties. On the fixed date, each of the two assessors read over their opinions to the parties and thereafter, the judgment was delivered on the same date. This means that the assessors read over their opinions to the parties before the Chairperson delivered his judgment as required

by the law. This compliance is further reflected in the DLHT's judgment which is found at pages 20 – 23 of the record of appeal. Although the Chairperson acknowledged the assessors' opinions, he differed with them and he gave his reasons. His reason is reflected at page 21 of the record of appeal that:

"The assessors who sat with me are of the unanimous opinion that this case has probate and administration issues, hence, the proceedings and judgment of the Ward Tribunal be nullified. With due respect, I differ with them. This is because, as I earlier pointed out the appellant alleged before the Ward Tribunal that he was given the suit land by his grandmother, the said Bhoke Gusuhi. Bhoke Gusuhi is still alive. So, there is no any issue of probate and administration of estate here."

More to this ground of appeal, in terms of regulation 19 (2) of the G.N. No. 174 of 2003, the opinions which are found in the original record were in writing and in Kiswahili language. In that regard, we are satisfied that the assessors were fully involved in the hearing of the appellant's appeal and that, the law was fully complied with by the assessors when giving out their opinions to the parties on 13th February, 2020 and by the Chairperson of the DLHT when dealing with the appeal.

Accordingly, we do not find merit in the second of appeal. We proceed to dismiss it.

In the end, the appeal is dismissed in its entirety with costs.

DATED at **MUSOMA** this 7th day of May, 2024.

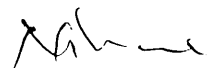
B. M. A. SEHEL
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. A. ISSA
JUSTICE OF APPEAL

The Judgment delivered this 8th day of May, 2024 in the presence of the applicant in person and in the absence of the respondent duly notified; is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL