

**IN THE HIGH COURT OF TANZANIA
AT MOROGORO**

LAND APPEAL NO. 5 OF 2021

[Originating from land appeal No. 54 of 2021 before DLHT for Kilosa]

JANINI MUSSA KIBOHOLA APPELLANT

VERSUS

**ANIA MOHAMED MUHUGA (the administratrix of the estate of the late
MOHAMED MUSSA MUHUGA)..... RESPONDENT**

JUDGMENT

20th – 27th of September, 2022

HASSAN, J.

The appellant, JANINI MUSSA KIBOHOLA seeks the reversal of the decision meted by the District Land and Housing Tribunal, herein after referred as “DLHT” dated 1st November, 2021 which upheld the decision of the Ward Tribunal of Kidodi delivered on 03rd July, 2019 in the land suit No. 27 of 2019 which was meritorious to the respondent herein. Aggrieved by the impugned decision, the appellant has come before this Court by way of appeal with six grievances as hereunder:

- 1. That, the appellant District Land and Housing Tribunal erred in Law and in fact for failure to hold that the Trial Ward Tribunal had no jurisdiction.*
- 2. That, the appellant District Land and Housing Tribunal erred in law and in fact for raised the issue of the decision without having heard the parties.*
- 3. That, the appellant District Land and Housing Tribunal erred in law and in fact for failure to hold that the Respondent's evidence was hearsay.*
- 4. That, the appellant District Land and Housing Tribunal erred in law and in fact for failure to re-evaluate the evidence tendered by the appellants at the trial Ward Tribunal to make its own findings and draw its own finding and draw its conclusion that the evidence of the appellant was heavier than that of the Respondent.*

At the outset, I find it crucial, to preface the judgment with a brief historical background describing what precipitated in the matter. In brief, at the Ward Tribunal of Kidodi, the late Muhamed Mussa Muhuga instituted a land suit on 12th June, 2019, No. 27 of 2019 against Janini Mussa Kibohola, the appellant herein. He accused him for trespassing the suit land. The matter

was decided meritorious for Muhamed Mussa Muhuga. Pained by the decision of the Ward Tribunal, the appellant herein appealed to the District Land and Housing Tribunal on 9th august, 2019. During hearing, the respondent Muhamed Mussa Muhuga passed away on 4th September, 2020 and Ms. Ania Mohamed Muhuga, takes charge as administratrix of estate after being appointed at the Primary Court of Ruaha on 12th November, 2020. Again, the decision at DLHT went in favour of the respondent. Therefore, embarrassed by the outcome of the appeal at DLHT, the appellant herein lodged the instant appeal for determination of the court.

After hearing has completed on 19th day of September, 2022, and paving the way for preparation of judgment, I observe a serious irregularity from the Judgment of the Ward Tribunal, touching the issue of jurisdiction which warrant the attention of the court. Knowing that the judgment is still pending, I vacated the order for the judgement and re-open the hearing. Hence, I recall the parties and *suo motto* invite them to address the court. The notice to recall was issued to the parties through mobile phone on 5th October, 2020.

At the court, today the 6th day of October, 2022, the parties were invited to address the court on two issues with respect to composition of the Ward Tribunal. The **first** was the number of the members forming a quorum; and

second confirmation of the judgment by the secretary of the Tribunal. Both parties readily addressed the court on the matters.

To begin with, the learned counsel Bahati submitted that the Ward Tribunal is a creature of law, in order to have mandate to execute its function it has to follow the laws and Regulations which are there, including observing the correctness of the quorum in the meeting. In this issue as it was raised by the court, the appellant concede that the Ward Tribunal was not properly constituted to hear and decide on the issue presented to it.

He further submitted that; quorum is a mandatory point of law, which touches on the jurisdiction of the Tribunal. It is the normal practice of the court that, if it is faced with such situation the decision of the Ward Tribunal is pronounced illegal. Therefore, in our part, we pray to the court to quash the decision of the Ward Tribunal and set aside the order and the suit to be remitted to the Tribunal which has jurisdiction.

On her part, Ms. Ania Mohamed submitted to the court that, the Ward Tribunal has the mandate to entertain the disputes arising within the area of its jurisdiction. The Ward Tribunal has investigated the matter and it was satisfied. With regards to the issue raised up by the court about the amount of members who have constituted the Tribunal is that, if the Secretary is

discounted from the list, there will remain three members and that will be a problem. I pray that the court should look at that irregularity and give the direction or decision according to the law.

In rejoinder the learned Counsel had nothing to add.

Going through the submissions of the learned counsel for both parties, I should now place myself to confront the issue in hand by reciting the provision of section 4 (1) (a) and (b), (4) of the Ward Tribunals Act, Cap.206, which provide:

4(1) Every Tribunal shall consist of-

(a) not less than four nor more than eight other members elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;

(b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).

(2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.

(4) any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote.

Thus, from the above section, it is clear that the Secretary does not form part of the member's panel. The Members are elected by the Ward Committee from the list of persons resident in the ward, while a Secretary of the Tribunal is appointed by the local government authority. They come from different appointing authority and assume different *portfolios* within the Tribunal. Thus, the secretary is not a member.

See also section 11 of the Land Disputes Courts Act (Chapter 216) which deals with the Composition of Ward Tribunal, 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 Tribunal Act.

Again, section 11 of the Land Disputes Courts Act (Chapter 216) provide for Procedure for mediation:

14 (1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.

(2) The Chairman to the Tribunal shall select all three members including a convenor who shall preside at the meeting of the Tribunal.

(3) In the event of the equality of votes, the member presiding shall have a casting vote in addition to his deliberative vote.

(4) The Ward Tribunal shall, immediately after settlement of a dispute record the order of mediation.

In my considered opinion, members listed in the quorum are those whose decision is on record and under section 4(4) of the Ward Tribunals Act, Cap. 206, they have to sign the decision to authenticate their participation in the decision making. That means, by signing in the quorum the secretary assumes the status of members. In the record, he is in row number 2 out of 4 rows.

Drawing inspiration from the decision of **Nada Qori V. Isaki Gilba**, Miscellaneous Land Appeal No. 2 of 2013, High Court of Tanzania, Arusha (unreported) where Hon. S. E. Mugasha (as she then was) observed as follows:

"A Secretary is not a member of the Ward Tribunal but an employee of the Local Government Authority. In the circumstances, as the decision is signed by the secretary, the same is tantamount to the Page 3 of 9 disputed being determined by the Secretary who is not a member of the Ward Tribunal and such decision is illegal"

The act of signing of the judgment implies that the secretary was part of the quorum in the decision making. The Signature of the Chairman and presiding members only would have been sufficient to legalize the said judgment.

Worth enough, as in the record, the quorum shows four peoples were in attendance, these include the chairperson and the secretary. That means, in exclusion of the secretary, there will remain only two members who shall seat with chairperson. This is contrary to section 11 of the Land Disputes Courts Act, (Chapter 216) which deals with composition of the Ward Tribunal. The section 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. [Cap. 206]"

With this anomaly, I am certain in my mind that the Ward Tribunal was wrongly constituted, and proceeding nullified.

By maintaining this position, I am aware of section 45 of the Land Disputes Courts Act, Cap. 216 provides for the shield over the decision of the Ward Tribunal or DLHT not to be reversed or altered on account of error, omission or irregularity in the proceedings before the or during hearing.

Similarly, I am also aware of the enactment of Written Laws (Miscellaneous Amendment)(No. 3) Act, 2018[Act No. 8 of 2018] and the decision in the case of **Yakobo Magoiga Kichere versus Peninah**, Civil Appeal No. 55 of 2017 CA T at Mwanza where the court held that:

"The law requires the courts to deal with cases justly, and to have regard to substantive justice...and cut back overreliance on procedural technicalities."

In my opinion, these laws come to protect the decision or findings obtained under legally constituted Tribunal. It has been said in time and time again that, issued of jurisdiction is of paramount and should be strictly

observed in any litigation. There are a number of authorities which underpinned the position of law in this matter. Such as **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda and Two Others**, [1995] TLR 155.

the Court stated that: -

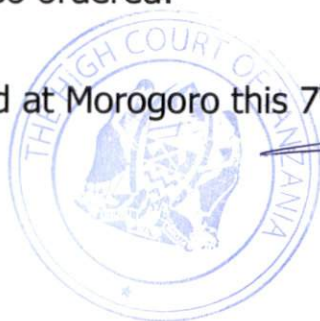
"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different nature".

In the premises, I invoke revisional powers conferred to me under section 43(2) of the Land Disputes Courts Act, Cap. 216 and nullify the decision of the Ward Tribunal, and that of the District Land and Housing Tribunal as the appeal before it, originated from a nullity proceeding. Appeal is therefore dismissed. Each party to bear its costs.

Parties may institute a fresh suit before competent jurisdiction in accordance with law.

It is so ordered.

Dated at Morogoro this 7th day of October, 2022.




S. H. HASSAN
JUDGE
07/10/2022