

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISC. LAND APPEAL NO. 22 OF 2022

(Originating from Land Appeal No. 1 of 2022 at District Land and Housing Tribunal of Katavi at Mpanda,
Original Land Dispute No. 114 of 2020 at Karema Ward Tribunal)

HAJI SALEE 1ST APPELLANT
MARIA TANGANYIKA 2ND APPELLANT

VERSUS

ANNASTAZIA NGALA RESPONDENT

JUDGMENT

16/03/2023 & 09/05/2023

MWENEMPAZI J.

The appellants are aggrieved by the decision, judgment and decree of the District Land and Housing Tribunal for Katavi at Mpanda in Land Appeal No. 1 of 2022. They have thus filed an appeal; to this honourable Court raising five grounds of appeal as follows: -

1. That, the appellate Tribunal erred in law by entertaining the appeal which originates from Ward Tribunal which lost adjudicatory

jurisdiction since 11/10/2021 and the impugned judgment was delivered on 16/12/2021.

2. That the appellate Court erred both in law and fact by holding that the receipt dated 10/11/2006 proved the respondent's father ownership over the Suitland while the receipt was vague and generalized and the same didn't mention specifically the Suitland.
3. That the appellate Tribunal erred in law and facts by its failure to recognize that the respondent never had a 'locus standi' since at Ward Tribunal because she filed a dispute in her personal capacity and not as an administrative of the estate of the late RAPHAEL NGALA.
4. That the appellate Tribunal erred in law and fact by its failure to recognize the fact that the respondent was out of 12 years statutory time to claim the Suitland as the 1st and 2nd appellant have been in possession of the Suitland since 2003.
5. That the appellate Tribunal erred in law and in facts by its failure to recognize the error that was apparent in the face of record that the composition of the Ward Tribunal in terms of gender was quite not in order and the same vitiated the whole resultant proceedings.

The appellants have thus prayed that the appeal be allowed with cost and the judgment and decree of the appellate Tribunal be quashed and set aside and any other order or relief the Court may deem it fit to grant.

The hearing of the appeal was conducted by way of written submission. Mr. Peter Kamyalile, Learned Advocate represented the Appellants and Mr. James Lubusi, Learned Advocate was representing the Respondent.

In his written submission, Mr. Peter Kamyalile, Advocate submitted first on ground one and five of the petition of appeal. He submitted that the appellate Tribunal erred in law to entertain the appeal which originated from Ward Tribunal which lacks jurisdiction to entertain the same. The counsel submitted that the jurisdiction of the Ward Tribunal to determine the ownership of land under Section 15 and 16 of the Land Disputes Courts Act, Cap 216 R.E 2019 were repealed on 11/10/2021 by section 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act, G.N. No. 41 Vol 102 published on 11/10/2021.

The position on the Ward Tribunal lacking jurisdiction to entertain disputes on ownership was emphasized in the case of **EDWARD**

KUBINGWA VERSUS MATRIDA A. PIMA, Civil Appeal No. 107 of 2018, Court of Appeal of Tanzania at Tabora delivered on the 5th November, 2021 (unreported) where it was held:

"...in the advent of the recent amendments made to the Act by the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021, whereby the powers of the Ward Tribunals to inquire into and determine disputes arising under the Land Act and the village Land Act and also the power to order recovery of possession of land and other powers of the Ward Tribunal used to have under section 13(2) and 16(1) of the Act have been immensely stripped off by the said amendments..."

The counsel submitted that according to section 14 of the Interpretation of Laws Act, Cap 1 R.E 2019 every Act shall come into operation on the date of its publication in the Gazette or some other date provided for in any other law. The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021, G.N. No. 41 Vol. 102 was published on 11/10/2021. The Act deals with procedure and therefore it is retrospective. The counsel referred to the case of **BENBROS MOTORS TANGANYIKA**

LTD VERSUS RAMANLAL HARIBHAI PATEL [1967] HCD 435 whereby

this Court held that:

"When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act".

The counsel has applied the position in this case and opined that since the law was published on the 11/10/2021 it is the date when it became operational. The judgment of Karema Ward Tribunal was delivered on the 16/12/2021 when its power was stripped off. The proceedings and judgment of the appellate Tribunal and that of the Ward Tribunal were thus rendered null and void.

In relation to the theme of jurisdiction, the counsel has submitted another factor affecting jurisdiction of the Ward Tribunal, composition of the Ward Tribunal which made the tribunal to lack jurisdiction. The counsel has submitted that the decision of the Ward Tribunal infringed the provisions of section 11 of the Land Disputes Court Act which require a minimum number

of members to be four. In this case, at the Ward Tribunal the members of the Ward Tribunal, who signed the judgment were only three (3), namely: Panto Kafumbatwa, Zakaria Shagembwe and Johari Juma. That was contrary to section 11 of the Land Dispute Courts Act, Cap 216 R.E 2019. He has submitted that two members who signed the judgment are not members of the Ward Tribunal; these are Asha Ramadhani an accountant and Fales D. Kayenze who signed as assistant Secretary. He has thus argued that the tribunal was not properly constituted. The counsel has referred to the case of **Edward Kubingwa Vs. Matrida A. Pima** (supra) where it was held that:

"...in order for the Tribunal or Court to pursue any matter before it, the same must be properly constituted otherwise it lacks jurisdiction. The above cited provisions of law clearly and mandatorily require that a properly constituted Ward Tribunal shall consist of at least four members and not more than eight members, three of whom being women".

According to the decision referred to above the irregularity by the trial Tribunal to observe the mandatory requirement on the composition of the

trial Tribunal vitiated the proceedings and the resulting decision and also rendered the trial Tribunal to lack jurisdiction to try the case. The counsel has prayed that the appeal be allowed.

The Counsel also submitted on the 2nd ground of appeal on the weight of evidence tendered, ground three on 'locus standi' and ground four on the issue of limitation of time. However, I think, since the 1st ground and 5th ground are touching the jurisdiction, they should first be considered before embarking on the other grounds of appeal.

The respondent has also submitted on all grounds of appeal as the appellant did. I, however, have decided to first deal with the 1st and 5th ground of appeal. The respondent was being represented by Mr. James Lubus.

Mr. James Lubus, Learned Advocate has submitted in opposition to the view held by Mr. Peter Kamyalile, Advocate for the appellant. According to Mr. James Lubus Advocate, the application in the Ward Tribunal was filed before the enactment of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021 G.N 41 Vol. 102 which came into operation on 11/10/2021. In his opinion, the submission by Peter Kamyalile Advocate is misleading to the

Court. The Counsel has submitted that the decision of the Ward Tribunal cannot be faulted as it was right to decide in favour of the respondent who proved his case to the balance of probability. He has called upon this Court to disregard the decision in the case of **Edward Kubingwa Vs. Matrinda A. Pima**, Civil Appeal No. 17 of 2018 as it is inapplicable in the present situation.

It is unfortunate however, the Learned Counsel for the Respondent has decided to act mute on the issue of composition of the Ward Tribunal in according to Section 11 of the Land Disputes Courts Act, Cap 216 R.E 2019.

In rejoinder, the Counsel for the appellant has submitted that the counsel for respondent has overlooked ground 5 of the appeal which is concerned with the issue of composition.

At this level, I think it will be proper to record my opinion on the question of jurisdiction which has been raised by the counsel for the appellant. In my view, the premise to start with is that the Ward Tribunal when dealing with the dispute was not properly constituted in compliance to section 11 of the Land Disputes Courts Act, Cap 216 R.E 2019. That rendered the proceedings and resultant decision to be vitiated as the tribunal

had not, clothed itself with the necessary jurisdiction to determine the matter. According to section 11 of the said Cap 216 R.E 2019:

"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".

In the case of **Edward Kubingwa Vs. Matrida A. Pima** (supra) it was observed that:

"In order for a Tribunal or Court to pursue any matter before it; the same must be properly constituted otherwise it lacks jurisdiction".

Section 4(3) of the Ward Tribunal Act provides that:

"the quorum at a sitting of a Tribunal shall be one half of the total number of members".

In this case only three members signed the decision, and the other two are not members of the Tribunal; one Asha Ramashani is an accountant and Fales D. Kayanze is an acting secretary. Hence, the Tribunal was not

properly constituted. Obviously, the Ward Tribunal lacked necessary jurisdiction. Hence, the remedy is to quash the proceedings and judgment resulting from them and setting aside any order emanating from the decision. That has the effect of rendering the appeal at the District Land and Housing Tribunal to lack foundation hence obsolete. Given the position, the proper and consequential order is to order for retrial.

However, since the Ward Tribunal has been stripped off with its powers to determine dispute on ownership of land, the order for retrial cannot be issued. Under the circumstances, the counsel for appellant did not mislead this Court but he was right, that the Ward Tribunal acted without necessary jurisdiction due to improper composition and now retrial is not possible as the Ward Tribunal has been stripped off with power to determine dispute on land ownership.

For the reasons the appeal is allowed, the proceedings and decisions in the lower Tribunal are quashed and orders set aside. It is further directed that any party who wishes to pursue his or her rights may file claims afresh in accordance with the current procedure and law. In consideration to the circumstances of the case, I make no order as to costs.

It is ordered accordingly.

Dated at Sumbawanga this 9th day of May, 2023.



T.M. Mwenempazi

T.M. MWENEMPAZI

JUDGE

ORIGINAL