

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOB A DISTRICT REGISTRY**

**AT BUKOB A**

**MISC. LAND APEAL NO. 33 OF 2021**

*(Originating from Appeal No. 27 of 2020 DLHT Bukoba and Land Case No. 23 of 2020 Nyakato Ward Tribunal)*

**1. EDWIN KAKWESIGABO.....1<sup>st</sup> APPELLANT**  
**2. RICHARD ANSELIMI.....2<sup>nd</sup> APPELLANT**

**VERSUS**

**ADVENTINA GEREVAZI.....RESPONDENT**

**JUDGMENT**

**27/07/2021 & 30/07/2021**

**NGIGWANA, J.**

This appeal has its genesis from the decision of Nyakato Ward Tribunal herein after referred to as the "trial tribunal". In 2020, the respondent Adventina Grevazi who was the applicant in the trial tribunal successfully sued the appellants Edwin Kakwesigabo and Richard Anselimi before Nyakato Ward Tribunal, Land Case 23 of 2020 for blocking a traditional path commonly known as 'eilembo'. The trial tribunal further ordered the Hamlet leader and village authorities to participate in the re-opening of the said path.

The appellants Edwin Kakwesigabo and Richard Anselimi who were the respondents in the trial Tribunal were aggrieved by the decision of the Trial

Tribunal, hence appealed to the District and Housing Tribunal for Kagera at Bukoba hereinafter referred to as "the appellate Tribunal", but the appeal was found devoid of merits thus was dismissed with cost. They were also aggrieved by the decision of the DLHT hence preferred a second appeal before this court on the following grounds:-

1. That, the appellate Tribunal erred in law and fact for failure to identify that the trial Tribunal was not properly constituted in law to determine the suit, of which occasioned a failure of justice.
2. That, the appellate Tribunal erred in law and fact for considering the Respondent's written submission in its decision which was filed out of time while an order of *ex parte* judgment against her already issued by the Tribunal.
3. That, the appellate Tribunal erred in law and fact for failure to identify that the trial Tribunal's decision/judgment is void in law for not being accompanied with reasons for the decision thereto thus; breach of principle of natural justice.
4. That, the appellate Tribunal erred in law and fact for failure to identify that the Respondent had a narrow path to her home but however; she is unlawfully forcing it to be a traditional path (Eilembo) by extending to the appellants land (suit land).

Wherefore pray that this honorable court be pleaded to allow this appeal with costs; by quashing and setting aside the trial tribunals proceedings on the 1<sup>st</sup> and 3<sup>rd</sup> grounds, quash and set aside the appellate tribunal's judgment on the 2<sup>nd</sup> ground, and declare that the appellants are lawful owners of the suit land on 4<sup>th</sup> ground.

The Respondent in reply to the petition of appeal drawn and filed by Mr. Lameck John Erasto learned advocate disputed all four (4) grounds of appeal hence prays for the dismissal of the appeal with costs.

During the hearing of this appeal the appellants had the services of Mr. Gildon Mambo while the respondent had the services of Mr. Lameck Erasto. At the outset Mr. Gildon prayed to abandon ground No. 4, the prayer which was a duly granted.

Arguing the 1<sup>st</sup> ground of appeal, Mr. Gildon submitted that the Trial Tribunal in determining Land Case No. 23 of 2020 had three sittings; the first sitting was on 5/03/2020 where the parties to the case were heard. Mr. Gildon further submitted that the second sitting was held on 24/03/2020 where the Trial Tribunal visited the locus in quo and the third sitting was held on 30/3/2020 in which the judgment was delivered. The learned counsel further submitted that in all those three sittings, the coram was not maintained, and no explanation for the change.

Mr. Gildon added that on 5/3/2020 members were four namely; **Felician Rugemalira, Projestus Kyaruzi, Liberata Albert and Generoza Oswald**, on 24/03/2020 Members were also four (4) namely; **Generoza Oswald, Paschali Edward; Liberata Albert and Projestus Mtakyawa**, and on the judgment date; 30/03/2020 members were **Projestus Kyaruzi, Liberatha Albert, Paschal Daudi and GenerozaOswald**. Mr. Gildon further submitted that the member by the name of Paschali Daudi gave the opinion, but in real sense did not hear the case, Projestus Kyaruzi is appearing in the judgment of the Trial

Tribunal but did not visit the locus in quo. Projestus Kyaruzi gave the opinion but did not sign the judgment. The learned counsel referred the court to section 4 (1) (a) and (3) of the Ward Tribunals Act Cap. 306 RE: 2002 and section 11 of the Land Disputes Courts Act Cap. 216 R.E 2019, and well as the case of **Adelina Koku Anifa Versus Byarugaba Alex, Civil Appeal No. 46 of 2019** CAT (unreported) to emphasize the need to maintain the necessary coram in the Ward Tribunal.

In reaction, Mr. Lameck Erasto, learned advocate for the respondent conceded with Mr. Gildon that the Trial Tribunal was not properly constituted, and under such a situation the proceedings and judgment cannot stand. He further submitted that since the irregularity was not caused by the parties to the case, let each party bear its own costs, the fact which was admitted by Mr. Gildon.

Now, the main duty of the court is to determine whether the pointed-out irregularities existed, and if yes, whether they are capable of vitiating the proceedings and judgments of both Tribunals.

The composition of the Ward Tribunal is stated under section 4 (1)(a) of the Ward Tribunals Act Cap 206 which provides;

*“Every Tribunal shall consist of 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”*

Section 4 (4) of the same Act provides;

*"At 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"*

Section 11 of the Land Disputes Courts Act Cap 2016 R: E 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"*

In this case, on 05/03/2020, the members were; Felician Lugemalira, Projestus Kyaruzi, Liberatha Alberth and Generoza Oswald. On 24/03/2020 the members were; Generoza Oswald, **Paschari Daudi**, Liberatha Albert and **projestus Mtakywawa** and on the judgment date; 30/04/2020 members were Generoza Oswald, **Projestus Kyaruzi**, Liberatha Albert and Paschari Daudi.

In the Appellate tribunal one of the complaints was that the coram of the Ward Tribunal was not maintained, but the same was not properly addressed by the Hon. Chairman because he ended relying on the coram of 05/03/2020. He did not bother to look on the coram of the rest two dates; 24/03/2020 when the locus in quo was visited, and 30/03/2020 when the judgment was delivered.

As correctly pointed out by Mr. Gildon, the coram was not maintained in all those three dates, and no explanation given for the change of members. However, the required number (Not less than 4 members) was maintained,

it cannot be said that the dispute was heard and determined by the Tribunal which was properly constituted on the obvious reason that there was tremendous change of members notwithstanding the fact that the case was heard and concluded within one month. No explanation offered as to why the same members were not maintained, though at last those who were present on 30/04/2020 were called up to give their opinion without considering that Projestus Kyaruzi and Paschari Daudi did not hear part of the evidence.

Another complaint which reached the DLHT was that, the judgment was not signed by one member namely Projestus Kyaruzi, the fact which was admitted by both parties, but differed on the consequences of the said omission. It was the appellant's submission that lack of signature of one member implies that that only three (3) members participated in giving the decision and that is contrary to the law. One Assessor by the name of Jenister Lugakingira opined that since one of the members has not signed the judgment, the same deserves to be quashed and set aside. The Appellate Tribunal finally relied on section 45 of the Land Disputes Courts Act Cap216 R: E 2019 and the Principle of Overriding Objective and held that the omissions occasioned no miscarriage of justice, hence dismissed the appeal with costs.

It is trite law that not every irregularity in the proceedings renders the proceedings fatal; it is only the irregularity which prejudice the rights of the parties to the case which renders the proceedings fatal.

In this case, the signature of the fourth member was important as it authenticates the document, but taking into account that the same had the tribunal seal, and the coram shows that the member who did not sign was present when the judgment was delivered, the omission is curable as properly ruled out by the DLHT.

I am alive of the principle Overriding Objective brought by the Written Laws (Miscellaneous Amendments) Act, (No.3) Act No.8 of 2018 which requires the courts to deal with cases justly, and to have regard to substantive justice, as well as the requirement of section 45 of the Land Disputes Courts Act Cap 216 R: E 2019 Provides

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice"*

In our case, taking into account the complaint that the trial tribunal was not properly constituted, as there was change of members during the hearing and in the judgment date, and the members who did not hear the whole case were called upon to give their opinion which later on, the Tribunal relied upon to arrive to its decision, it is my considered view that both counsels were very right that no valid proceedings and judgment can be obtained from the trial tribunal which was not properly

constituted. It should be noted that the principle of Overriding Objective was never meant to be used as a panacea to the mandatory procedures.

In the premise, the proceedings of both the trial tribunal and the DLHT are hereby declared a nullity and quashed. Their respective verdicts are also set aside. Each party shall bear its costs since none of them bears the blameworthiness for the abnormality committed by the trial tribunal. I further order trial *denovo* by the trial Tribunal before the new sets of members of the Ward Tribunal.

It is so ordered.



E. Ngigwana  
JUDGE  
30/07/2021

Judgment delivered this 30<sup>th</sup> day of July in 2021 in the presence of the appellants, their advocate, Mr. Gildon Mambo, respondent, and Ms. Erieth Barnabas, learned advocate.



E. Ngigwana  
JUDGE  
30/07/2021