

TANZANIA / JUDGMENT

firidion marco vs bahati faustine

2023 tzhc 18681 30 june 2023

COURT
TZHCDECIDED
30 June 2023

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE DISTRICT REGISTRY OF BUKOBA) AT BUKOBA LAND APPEAL CASE NO. 87 OF 2022 (Arising from Karagwe District Land and Housing Tribunal's Appeal Nd. 63 of 2021, Original Sand case No. 03/2021 of Bugene Ward Tribunal) FIRIDOLIN MARCO..... APPELLANT VERSUS BAHATI FAUSTIN E..... RESPONDENT

JUDGMENT

Date of last Order; 26.06.2023 Date of Ruling: 30.06.2023 A. Y. Mwenda J, Before Bugene Ward Tribunal, the Respondent one BAHATI FAUSTINE filed a suit against the appellant, one FIRIDOLIN MARCO for encroachment of his piece of land located at Irundu area, Bugene Ward in Karagwe District of Kagera Region. The said suit was registered as original land case No, 03/2021. After the full hearing, the Ward Tribunal declared the present respondent as the rightful owner of the land in dispute. Aggrieved by the said decision, the present appellant filed Land Appeal No. 89 of 2021 before the District Land and Housing Tribunal for Karagwe at Kayunga. He was unlucky as at the end of the judicial day, his appeal was dismissed for want of merits. i Dissatisfied by the decision of District Land and Housing Tribunal dismissing his appeal, he knocked the doors to this Court with an appeal with three grounds. The said grounds are summarized herein below as follows, that: 1, That the learned chairman of the District Land and Housing Tribunal grossly erred in law when failed to note one of the serious irregularity in the Ward Tribunal proceedings in the sense that they were silent on the quorum/members who heard witness's testimonies.

2. That the learned chairman of the District Land and Housing Tribunal grossly erred in law, when failed to know that members who composed the judgment of the Ward Tribunal was never present at the hearing of parties and their witnesses evidence.
3. That the learned chairman of the District Land and Housing Tribunal grossly erred in law when blessed the Ward Tribunal's judgment in which the respondent never prove his case to the required standard. When this appeal came for hearing both parties appeared in person without legal representation. When he was invited by the Court to argue his appeal, the appellant prayed the court to adopt the grounds of appeal as part to his oral submissions.

Further to that he submitted that the respondent's vendors sold the land in dispute to him (the respondent) without involving him as the owner of the neighboring land. The appellant went further by submitting that the Hon. Chairman of the Ward tribunal erred considered the evidence of one ELIZEUS MICHAEL who was neither summoned by him nor by the respondent which to 2 him led a wrong conclusion. In concluding his submission, the appellant prayed the present appeal to allowed with costs. In opposing the present appeal, the respondent had nothing much to submit. He rather, prayed the Court to adopt his reply to the petition of appeal as part of his oral submissions. He concluded by praying the present appeal to be dismissed with costs. That marks the end of the submissions by the parties and as such this court resorts into making its findings on whether this appeal is meritorious. As hinted above, this is a second appear challenging the decision of the District Land and Housing of Karagwe at Kayanga. I understand that this being the second appeal, this court is not allowed to disturb the concurrent findings of the lower tribunals unless it is satisfied that, the lower tribunals' decisions were reached due misapprehension of evidence, violation of principle of laws or procedure, or the findings has occasioned miscarriage of justice. This legal proposition was stated in the case of SIMON KICHELE CHACHA VS EVELINE M. KILawe, CIVIL APPEAL NO. 160 OF 2018, CAT (unreported), where the Court, while citing the case of AMRATLAL DAMODAR SILK STORES VS A.H. JARIWALLAH t/a ZANZIBAR HOTEL [1980] TLR 31 at page 32, held as follows. "Where there are concurrent findings of facts by two courts, the Court of appeal, as a wise rule of practice, should not disturb them unless it is clearly shown that 3 there has been a misapprehension of evidence, a miscarriage of justice or violation of some principles of law or procedure." In the present matter, the appellant has shown that the lower tribunals' findings are tainted with violation of some principle of law when the coram and the involvement of assessors (members) before the Ward Tribunal was not observed. In his first and second ground of appeal, the appellant challenged the lower tribunal's findings as follows. "1. That the learned chairman of the District Land and Housing Tribunal grossly erred in law when failed to note one of the serious irregularity in the Ward Tribunal proceedings in the sense that they were silent on the quorum/members who heard witness's testimonies.

2. That, the learned Chairman of the District Land and Housing Tribunal erred in law, when he failed to know that members who composed the judgment of the Ward Tribunal was never present at the hearing of the parties and their witnesses' evidence." Based on these grounds which are points of law, this Court, decided to deal with them, save for the 3rd ground of appeal which solely challenges the lower tribunals' findings of facts. 4 In a bid to deal with the said grounds of appeal, this Court went through the Ward tribunal's record and noted the following. One, when the hearing of the matter commenced on 25/05/2021, there is neither coram recorded, i.e. there is neither the name of a Chairman nor members who were recorded. However the name of the Chairman and members surfaced in the judgment and when the locus in quo was visited. The composition of the Ward Tribunal is a creature of the Law. It is provided for under Section 11 of the Land Disputes Court's Act, [Cap 216 R.E 2019] and Section 4(1) (a) of the Ward Tribunal's Act. These provisions provides as follows: "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". [Emphasis added]. The interpretation of the above provisions was discussed in the case of EDWARD KUBINGWA V. MATRIDA A. PAMA, Civil Appeal No. 107 of 2018 where the Court said the following: "The above recited provisions of law clearly and mandatoriiy require that a properly constituted Ward Tribunal shall consist of at least four members, and not more than eightmembers, three of whom being woman." 5 It Is however important to note that this court is aware of the current legal position regarding involvement of members before the Ward Tribunal. The said position was propounded by the Court of appeal in the case of ZAHARA MINGI V, ATHUMANI MANGAPI, CIVIL APPEAL NO. 279 OF 2020(Un reported). In the said case the court held inter alia that: "Section 13 of the Land Disputes Court Act underscores the spirit of simplicity of accessibility of the Ward Tribunals, by reminding all. and sundry that the primary functions of each Ward Tribunal are to secure peace and harmony, mediating between and assisting the parties to reach amicable settlement. See Yakobo magoiga Gichere V. Peninnah Yusuph, CivilAppeal no. 55 of

2017. Under such circumstances, the Ward Tribunals are not bound with technicalities..." Much as this Court has taken note of the said authority, which is binding, the circumstances in the present matter are distinguishable. This is so because in the case of ZAHARA MINGI V. ATHUMANI MANGAPI (supra) the members were recorded when the hearing began, when the trial Tribunal visited the locus in quo and in the verdict. Further to that, the CAT was of view that the members were in attendance because the proceedings reflects that the presiding, members were present because they asked the witnesses some question. In the present matter, as I have hinted above, when the hearing started, members 6 were recorded and also that, although the record shows questions were posed to the parties, the records is silent as to who exactly asked the said question and it is uncertain as to how many were in attendance during the hearing. From the foregoing, this court is of the view that the Ward Tribunal was not properly constituted, thus the whole proceedings are a nullity for want of involvement of members. On that basis this appeal is meritorious, and it is allowed by nullifying the proceedings of the lower Courts and the subsequent judgment and orders are set aside. Each party shall bear its own costs. Judgment delivered in chamber under the seal of this court in the presence of Mr. Firidolini Marco the Appellant and in the presence of Mr. Bahati Faustini the 7

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