

TANZANIA / JUDGMENT

## MAZENGO DOTTO

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IN THE HIGH COURT OF TANZANIA DODOMA SUB-REGISTRY AT DODOMA LAND APPEAL NO.  
18148 OF 2024 (Arising from Land Appeal No. 13 of 2023 in the District Land and Housing Tribunal  
at Dodoma; originating from Land Case No. 8 of 2021 in Mkonze Ward Tribunal) MAZENGO  
DOTTO..... APPELLANT VERSUS HELENA EMILY  
TANGAZO..... RESPONDENT

## JUDGMENT

0h November & 31st December, 2024 MUSOKWA, J, This is an appeal from the decision of the District Land and Housing Tribunal in Dodoma (DLHT), in Land Appeal No. 13 of 2023. The matter originated from Mkonze Ward Tribunal (trial tribunal), where the respondent who was the claimant was declared the owner of the disputed land. The appellant being aggrieved by the decision of the trial tribunal dated 25th June 2021, preferred the Land Appeal No. 13 of 2023 before the DLHT, but, again, the decision was issued in favour of the respondent. Undeterred, the appellant has approached this court with the present appeal which contains the following grounds of appeal: - i

1. That, the decision of the trial tribunal is null and void for want of proper composition.
2. That, the trial tribunal erred in law and fact in holding that the suit land belongs to the respondent basing on weak and contradictory evidence of her witness. At the hearing of this appeal, the appellant had the service of Mr. Isaya Nchimbi learned advocate. The respondent was represented by Ms. Neema Ahmed, also learned counsel. With the leave of this court, the appellant's counsel abandoned the 2nd ground of appeal and submitted solely on the 1st ground of appeal. Mr. Nchimbi asserted that the Land Appeal No. 13 of 2023 before the DLHT at Dodoma, was an appeal from the decision of the trial tribunal. The appellant's counsel contended the decision of the trial tribunal, for being marred with irregularities for failure to observe the proper composition of members of the tribunal during the trial. According to the appellant, in some of the sessions, the coram only indicated the names of the members but not their respective gender. However, it is the requirement of the law that the coram should not only comprise of the names of the members but must also include their respective gender. On appeal, the DLHT held that the aforementioned irregularity did not occasion any injustice to the appellant, 2 as reflected at page 4 of the judgment of the DLHT. According to the appellant, the said decision of the

DLHT was unjustifiable. Mr. Nchimbi reiterated that improper composition of members of the trial tribunal is an incurable irregularity. The appellant referred to section 11 of the Land Disputes Courts Act Cap. 216, R.E. 2019 (LDCA). The section provides for the statutory composition of the trial Tribunal. The coram should consist of four to eight members, three of whom must be women. Mr. Nchimbi further referred this court to the proceedings of the trial tribunal, the meeting held on 4th June, 2021. In this meeting, there were four members; the chairman and three other members. The names and signatures of the members were duly recorded, but their gender was not indicated. The proceedings of the trial tribunal dated 18th June, 2021 were also referred to. At the aforementioned date, the gender of the members was also not indicated. However, for the session convened on 25th June 2021, the date scheduled for issuing the decision of the trial tribunal, there were three members and the chairman; on the said date, the records provide for the names of the members including their gender. The case of Joshua Koskey Aramaiyo vs Daniel Makowa Machota, Mise. Land Appeal No. 115 of 2021 (unreported) was cited in support this position. 3 On the basis of the foregoing, the appellant's counsel prayed for the proceedings and orders of the DLHT; including those of the trial tribunal, to be declared a nullity, and accordingly to be quashed and set aside. Further, this court to order that the matter be heard afresh before the trial Tribunal. In rebuttal of the appeal, Ms. Ahmed firmly submitted that the DLHT was correct in dismissing the appeal before it, and invoking section 45 of the LDCA. The said provision stipulates that a decision of the trial Tribunal should not be nullified on the basis of procedural irregularities, or any omissions thereof. The respondent contended that the appellant was grossly misdirected by only focusing on the sessions in which the gender of the members of the trial tribunal was not recorded; while in a number of the sessions conducted at the trial tribunal, the proceedings clearly provide for the gender of the members. The said sessions include those dated; 11th June, 2021; and 25th June, 2022. Notably, it is the same members who were present in all the sessions throughout the trial, to the final determination of the case. In addition to the aforementioned, the respondent prayed to distinguish the case cited by the appellant, to the matter at hand. Ms. Ahmed emphatically 4 stated that section 14 of LDCA was duly complied with throughout the trial; whereas the coram duly included female members in all sessions, as required by the law. The respondent's counsel further argued that the appellant has failed to prove his claims as to how the alleged irregularities occasioned injustice to the appellant. Thus, the respondent prayed that the appeal be dismissed with costs. In his rejoinder submissions, the appellant's counsel prayed to maintain his earlier submissions. Additionally, the appellant submitted that the provision cited by the respondent, more specifically section 45 of LDCA, refers to matters of evidence and is not applicable to the issue at hand. Further that, section 14 of LDCA, also cited by the opponent counsel is strictly applicable to mediation, as opposed to the circumstances in the present case. Therefore, the said provision is not applicable to the matter before the trial tribunal which was at the stage of hearing. The main issue for determination by this court is whether the trial Tribunal was properly constituted. In the case of Edward Kubingwa vs Matrinda A. Pima, Civil Appeal No. 107 of 2018 (unreported), the Court of Appeal of Tanzania (CAT) held, among other things held that: - 5 "It has to be

emphasized at this very stage that in order for a tribunal or court to pursue any matter before it, the same must be properly constituted otherwise it lacks jurisdiction." [Emphasis added] In the case at hand, the four members participated in the trial on 26th May

2021. On the session held on 4th June 2021, five members participated. On 11th June 2021, a total of four members formed a coram. On 18th June 2021, the trial tribunal was constituted by five members. Lastly, four members were present on 25th June 2021, when the judgment of the trial Tribunal was delivered. As correctly submitted by Mr. Nchimbi learned counsel for the appellant that the records relating to the day of judgment by the trial Tribunal, provide for the names of the members as well as their respective gender. The said members were Hawa Maguruga (female), Norwadia Mwagu (female), Lukas Ramadhani (male) and Donaty Mbao (female). Additionally, on 11th June 2021, four members were indicated as well as their respective gender, namely Hawa Maguruga (female), Norwadia Mwagu (female), Lukas Ramadhani (male) and Stephan Kidahya (male). I have purposely listed the names of members and their respective gender who were present on 11th June 2021, and 25th June 2021. The reason is that 6 the said members were present in all the previous sessions of the trial tribunal (commonality of members). In that regard, the necessary coram of four members was observed. Similarly, the question of gender for all sessions held by the trial Tribunal was observed as can be easily detected based on the record of the two sessions held on 11th June 2021, and 25th June 2021. In the circumstances of this case, I am persuaded to agree with the respondent that the appellant was misdirected by focusing only on the sessions that had no record of the gender. As a result, the appellant's learned counsel, deliberately or otherwise, disregarded the sessions that recorded the gender and the commonality of members, leading to his biased view. The appellant cited the case of Joshua Koskey Aramaiyo (supra) deliberated by this court (Hon. Mtulya J.), which partly held that: - "In the present case, the record shows that six (6) members participated in the proceedings of Morotonga Ward Tribunal (the ward Tribunal) in the land disputes No 13 of 2020 (the dispute) ...However, there was no display of gender status on each specific member of the tribunal..." [emphasis added] From the holding above, it is clear that there was completely no indication of the gender of the members who participated in the trial Tribunal. However, in this appeal, as ably stated earlier, the records of the trial tribunal 7 dated 11th June 2021 and 25th June 2021, provide clearly the names of the members as well as their respective gender. Equally important, the said members were present in all the previous sessions held by the trial tribunal. Logically, if I may add, the gender of a particular member cannot change depending on a particular session of the trial tribunal. Accordingly, the cited case of Joshua Koskey Aramaiyo (supra) is distinguishable and cannot be invoked in the circumstances of this matter. In consequence thereof, I find no reason to fault the findings and judgment of the DLHT. Thus, this appeal is devoid of merits and it is hereby dismissed with costs. It is so ordered. Right of appeal fully explained. Judgment delivered in the presence of the appellant and his advocate, Mr. Isaya Nchimbi; and in the presence of the respondent. I.D. MUSOKWA JUDGE 8

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