

TANZANIA / JUDGMENT

mwita wiranga vs pilly sincha

2020 tzhc 4429 18 december 2020

COURT
TZHCDECIDED
18 December 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN DISTRICT REGISTRY OF
MUSOMA AT MUSOMA MISCL. LAND APPEAL NO. 70 OF 2020 {Arising from the decision of the
District Land and Housing Tribunal for Mara at Musoma in Appeal No. 150 of 2019 which
originated from the decision of the Kyambahi Ward Tribunal in Application No. 10 of 2018)
MWITA S/O WIRANGA..... APPELLANT VERSUS
PILLYSINCHA..... RESPONDENT

RULING

18th and 18th December, 2020 KISANYA, J.: This appeal finds its origin from the suit filed before Kyambahi Ward Tribunal by the respondent, Pilly Wiranka. She claimed that appellant Mwita Wiranga had trespassed into the land allocated to her by the Village Committee in

1999. On the other hand, the appellant adduced that the disputed land belonged to his late sister one Mgesi Wiranga who acquired it from her late son Joseph Kinyena. The respondent's case was dismissed for want of merit. Consequently, the appellant was declared lawful owner of the disputed land by the trial tribunal. Dissatisfied, the respondent appealed to the District Land and Housing Tribunal for Mara at Musoma (hereinafter referred to as "the appellate Tribunal"). One of the ground of appeal was to the effect that, the trial i tribunal was not properly constituted. It was held by the appellate tribunal that the trial tribunal was properly constituted. The appellate tribunal went on to hold that the respondent had proved her case on the balance of probabilities and that, the appellant had no locus standi to prosecute the case on behalf of his late sister. From the foregoing, the decision of the trial tribunal was reversed and the respondent declared lawful owner of the disputed land. Aggrieved, the appellant lodged this appeal. He advanced six grounds which can be merged into two: First, the respondent did not prove her case on the balance of probabilities. Second, the appellant had locus standi to prosecute the case after being appointed to administer the estates of the late Mgesi Wiranga. In the course of determining this appeal, the Court noted that the proceedings of the Ward Tribunal do not show the coram of members present on each day the matter was called on for hearing. Therefore, the parties were asked to address whether the Ward Tribunal was properly constituted. In this appeal, the appellant appeared in person while the respondent though present in person, she had

the legal services of Mr. Kulwa Sanya, learned advocate. Submitting on the issue raised by the Court, both parties were in agreement that only two female members participated in the proceedings before the trial tribunal. Mr. Sanya argued that the said proceedings contravened the provision of section 11 of the LDCA. He then moved the Court to nullify the 2 proceedings of the trial tribunal and quash the judgment and orders made thereto. Mr. Sanya urged the Court to order retrial of this case in the District Land and Housing Tribunal. On his part, the appellant asked the Court to order for retrial in the Ward Tribunal. I have dispassionately considered the submissions by both parties and examined the evidence on record. It is my humble view the issue raised by the Court suo motu is sufficient to dispose of this appeal. In terms of section 11 of the LDCA, a ward tribunal is properly constituted by not less than four and not more than eight members out of which three members are required to be women. The section provides that: "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." Such requirement is also provided for under section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002. The issue of composition of composition of the trial tribunal cannot be taken lightly. It goes to the root of the case on the mandate of the tribunal to hear and determine the matter filed before it. The law is settled any trial conducted in contravention of the above cited provision is a nullity. This stance was taken in *Adelina Koku Anifa and Another vs Byarunga Alex*, Civil Appeal No. 70 of 2017, CAT at Tanga (unreported) where the Court of Appeal held that: 3 Since only three members participated in the trial of the matter subject of this appeal at the level of the Ward Tribunal, the proceedings were marred with irregularity, thus null and void. In order to comply with the above provision, it is pertinent for the coram of the proceedings to show the members present at every sitting of the ward tribunal. It also vital for the gender of the members to be reflected be the proceedings. In absence of the Coram and proof of gender of the members who heard the matter, this Court cannot make an informed decision as to whether the ward tribunal was properly constituted. The trial tribunal proceedings in the case at hand lacks the coram of the members who heard the matter before it. The record shows that members who votes for or gave opinion on the matter were Ben John, Mashimo Bakari, Mwita Getari, Nyabanane Singinki, Mwita Sibora and the Chairman (M. Bohende). However, it is not known as to whether the said members were present on each day the ward tribunal sat to hear the matter. As if that was not enough, the gender of members was not shown. It is not clear as to whether women participated in hearing this matter. Both parties submitted that only two female members were present. This contravened section 11 of LDCA which requires at least three female members to present. Therefore, the proceedings of the Kyambahi Ward Tribunal were vitiated by the above pointed irregularities. Consequently, the appeal before the District Land and Housing Tribunal and the present appeal are also a nullity. In view thereof, the Court exercises its revisional powers under section 43(1)(b) and (2) of the LDCA to nullify the proceedings and quash the 4 judgments and subsequent orders made by the Kyambahi Ward Tribunal in Application No. 10 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Appeal

No. 70 of 2019. A party who is still interested to pursue the matter is at liberty to institute a fresh case before a tribunal with competent jurisdiction. Each party shall bear its own costs. It is so ordered. Dated at MUSOMA this 18th day of December, 2020. E. S. Kisanya JUDGE 18/12/2020 Court: Judgment delivered in Chamber this 18th day of December, 2020 in the presence of the appellant in person and Mr. Kulwa Sanya, learned advocate for the respondent who is also present in person. B/C Mariam- RMA present. CZ E. S. Kisanya JUDGE 18/12/2020 5

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