

TANZANIA / JUDGMENT

salumu ally ngajuma vs titus daud muhumba 2022 tzhc 15707 30 november 2022

COURT
TZHCDECIDED
30 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MOROGORO SUB-REGISTRY)
AT MOROGORO LAND APPEAL NO. 35 OF 2022 (Arising from the Decision of the District Land
and Housing Tribunal for Ulanga, at Mahenge in Land Appeal No. 37 of 2021; Originating from
Land Case No. 02 of 2021 at Minepa Ward Tribunal) BETWEEN SALUMU ALLY NGAJUMA
APPELLANT VERSUS TTTUS DAUD MUHUMBA RESPONDENT

JUDGMENT

30th November, 2022 CHABA, J. This is a second appeal. The matter traces its origin from the decision of the Ward Tribunal namely, Minepa Ward Tribunal, at Ulanga in Land Case No. 2 of 2021 whereby the appellant successfully sued the respondent over an eight-acres of land located at Kivukoni Village. Aggrieved by the decision of the trial Ward Tribunal, the respondent filed an appeal before the District Land and Housing Tribunal for Ulanga, at Mahenge (the DLHT) through Land Appeal No. 37 of 2021, praying the DLHT to allow the appeal, quash the trial Ward Tribunal's proceedings and judgment and set aside the orders stemmed therein basing on the following grounds. Page 1 of 7 One; That, the trial Ward Tribunal's Judgment is invalid for being delivered by the trial Ward Tribunal in the presence of members, namely, Thomas Makori, Selina Privatus Muhogo, Salvlua Beda Mhako, and Nuru Hashimu Sanda being members who did not fully participate during trial of the matter. Two; That, the proceedings of the trial Ward Tribunal's and Judgments were vitiated by the irregularities and inconsistency in the quorum/coram of trial members. Three; That, the trial tribunal's Judgment is doubtful for being delivered in favour of the respondent despite equal votes cast by only six unnamed members who voted for against the respondent instead of eight participating members listed in the Judgment (sic). Four; That, the trial tribunal's judgment lacks clear reasons for decision, and Five; That, the trial tribunal failed to properly analyse, assess and evaluate the evidence on record hence it came up with wrong conclusions rendering failure of justice. After the full trial, the DLHT (First Appellate Tribunal) nullified the decision of the Ward Tribunal by declaring that there were irregularities on the quorum of the Ward Tribunal. Dissatisfied, the appellant in a bid to pursue what he believed to be his rights, he preferred the instant appeal clothed with two (2) grounds of appeal enumerated

hereunder: -

1. That the honourable Chairman erred in law and in fact in failing to write a proper ruling, that he should have provided for a way forward regarding the said land dispute between the parties after Page 2 of 7 setting aside the trial ward's judgement on an account of irregularities on the quorum of the trial Ward Tribunal.
2. That, the learned Chairman erred in law and in fact for failure to hold that the dispute should start afresh after setting aside the trial ward's judgement on an account of irregularities on the quorum of the trial tribunal. When the appeal was called on for hearing, the appellant appeared in person, unrepresented whereas the respondent enjoyed the legal service of Ms. Ndanyanse, learned advocate. With the parties' consensus, the appeal was argued and disposed of by way of written submissions. Arguing in support of grounds of appeal, the appellant contended that it was the appellant's expectation that the learned Chairman of the DLHT should have ordered for retrial. Instead of dismissing the decision of the trial Ward Tribunal basing on the trial tribunal's errors of which the appellant is totally not concerned. He further submitted that, in determining a land case, the Ward Tribunal must be composed of not less than four (4) members of the Ward Tribunal, whereby according to the proceedings, the trial Ward Tribunal was made up of six (6) members, which is a proper number as per the requirement of the law. Responding to the appellant's submission, the respondent's advocate contended that, the DLHT should have ordered for the retrial of the case having Page 3 of 7 nullified the trial tribunal's proceedings and quashed the judgment, but the omission was not that much fatal because the appellant was not prejudiced anyhow as no failure of justice was rendered due to that omission. She further submitted that, the parties' rights over the suit land were revert to their original position after the nullification of the trial tribunal's proceedings and judgment, and that either of the parties was at liberty to initiate the dispute against the other party. According to her, the nullification of the proceedings and all consequential orders had the effect of causing an automatic hearing of the matter afresh, he thus prayed for this appeal to be dismissed with costs. Having considered the parties' rival submissions and upon passing through the records, the following are my observations: One, it is undisputed that the Chairperson of the DLHT and assessors revealed that the trial Ward Tribunal determined the matter while its composition was not made in accordance with requirement of the law, thus rendering the proceedings and judgment of the Ward Tribunal a nullity, thereby quashing the judgment of the Ward Tribunal together with the proceedings. Two, the main complaint that instigated this appeal is failure by the DLHT to order for retrial after nullifying the decision and proceedings of the trial Ward Tribunal. From the above deliberation, I have seen prudent to address the above ground of appeal which, in my considered view, is able and capable of disposing of the whole appeal. The vital question is, whether the District Land and Page 4 of 7 Housing Tribunal under the circumstances of this case, erred in law and fact by failure to order for re-trial. I am mindful of the facts that the Ward Tribunal was not properly constituted in terms of the provision of section 11 of the Land Disputes Courts Act, [Cap. 216 R. E, 2019] which requires the coram of a Ward Tribunal to be constituted by not

less than four members or more than eight members of whom three shall be women. On reviewing the record, I found out that the DLHT was correct in nullifying and quashing the proceedings of the trial Ward Tribunal upon noted such anomaly. Hence, I am inclined to hold that the proceedings and the judgment of the trial Ward Tribunal are nullity and illegal for having been improperly conducted without proper coram as required by law. Having so found, the next question is, what could have been the right recourse to the anomaly? In this case, both parties are still interested to pursue for their rights under the law. Hence, in my considered opinion, the proper remedy is to order re-trial of the matter. The Court of Appeal of Tanzania in the case of Rashid Kazimoto and Masudi Hamisi Vs. Republic, Criminal Appeal No. 458 of 2016, which quoted with approval the authority in the case of Sultan Mohamad Vs. Republic, Criminal Appeal No. 176 of 2003 (Both unreported) which also quoted with approval the decision in Fatehali Manji Vs. Republic (1966) E.A 343, underscored the principles governing the situation in which a retrial can be ordered. It held: - Page 5 of 7 "In general, a retrial will be ordered only when the original trial was Illegal or defective; It will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill gaps in its evidence at the first trial, however, each case must depend on its own facts and circumstances and an order for retrial should only be made where the Interest of Justice require it". Also see: Paschal Clement Branganza Vs. Republic (1957) EA 152. Having highlighted the legal principle, it has been restated in many more decisions of this Court as a litmus paper to determine whether a retrial should be ordered, or it should be declined. Looking at the principle in the above cited authorities, it is a condition precedent that, the order for retrial can only be made where the following conditions exist: -

- a) When the original trial was Illegal or defective,
- b) Where the findings were set aside not because of insufficiency of evidence, or for the purpose of enabling the party benefiting from it to fill gaps in its evidence at the first trial,
- c) Where the circumstances so demand, and
- d) Where the interest of justice requires it. Ik Page 6 of 7 From the afore-mentioned conditions precedent for ordering a retrial, if the court finds that the circumstances described and expounded in the above authorities are established, and where the interest of justice so requires, the Court may order for re-trial. With all the highlighted shortcomings in the proceedings of the Minepa Ward Tribunal, it goes without saying that, retrial of the matter is a must, and it is a perfect remedy in the circumstances of this case. I say so because, the fault leading to the nullification of the proceedings was not caused by the parties to this case but by the trial Ward Tribunal itself. In the result, this application is meritorious. I thus, order the retrial of the matter before the Minepa Ward Tribunal with a new set of members. Each party to bear its own costs. It is so ordered. DATED at MOROGORO this 30th day of November, 2022. 0/e M. J. ABA 0 c X -2nd JUDGE Vf, V'>? > LU is^ 30/11/2022 Page 7 of 7

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/salumu-ally-ngajuma-v-titus-daud-muhumba-wardtribunalcomposition-tzhc-2022

Prepared on 14 October 2026 · Esheria