

TANZANIA / JUDGMENT

twafika nuru chuma vs hamis kiuno singa 2021 tzhclandd 854 3 november 2021

COURT
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3 November 2021

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND APPEAL NO. 37 OF 2020 (Arising from the decision of District Land and Housing Tribunal for Kibaha at Kibaha in Land Appeal No. 71 of 2019 originated from Maneromango Ward Tribunal in Land Case No. 13 of 2019) TWAFIKA NURU CHUMA APPELLANT VERSUS HAMISI KIUNO SINGA RESPONDENT JUDGMENT ON APPEAL Date of Last Order: 20/09/2021 & Date of Ruling: 03/11/2021 A. MSAFIRI, J: Being aggrieved by the decision of the District Land and Housing Tribunal for Kibaha in Land Appeal No. 71 of 2019, the appellant filed the petition of appeal challenging the said decision based on one ground of appeal that;

1. That, the District Land and Housing Tribunal, in its decision on the case, erred in law in holding to the effect that the Ward Tribunal which tried the case was properly constituted notwithstanding the fact that four members who participated were all males and did not include any female member. , J\n I tin. 1 jPage The appellant basing on the above ground of appeal, prayed for this Court to grant the following reliefs; that the appeal be allowed, the judgment and decree of both Tribunals be quashed and set aside and any other relief (s) as the Honourable Court deems fit in the interest of justice. The brief background of this dispute can be construed from the records before this Court. The dispute started from Maneromango Ward Tribunal in Kisarawe District where the appellant was sued by the respondent for trespassing to the land in dispute. The Ward Tribunal decided in favour of the respondent and declared him the owner of the disputed land. The appellant was aggrieved by the said decision and appealed to the District Tribunal. At the District Tribunal, among the grounds of appeal raised was the issue of the composition of the Ward Tribunal when hearing and determining the dispute. The District Tribunal embraced the decision of Ward Tribunal by dismissing the Appeal. Now the appellant is before this Court claiming that the Ward Tribunal was not properly constituted as there was no a single female member during hearing. When the appeal came for hearing, the manner of disposing it was scheduled to be conducted by way of written submissions. On the submissions, the appellant was represented by Advocate Glory Sandewa from Tanzania Women Lawyers Association who drew and filed submission in support of this Appeal while the respondents submission was drawn by Advocate Richard Peter Mbuli. Ay I / . 2 |Page Ms. Sandewa submitted by insisting that, the trial Tribunal did made an error in not including female

members as required by law and therefore it was improperly constituted. When the issue was raised before the District Tribunal, it was the respondent who submitted that the requirement was fulfilled by the presence of the secretary who was a female. The issue which was raised then was whether Faraja Chuma who was secretary to the Ward Tribunal was qualified to be a member of the Tribunal for the purpose of establishing the validity of the quorum. She submitted further that, the secretary does not qualify as a member of the Tribunal. The position of the secretary is provided under Section 4 (2) of the Ward Tribunals Act Cap. 206 and the position has been supported in the decision of the Court of Appeal in the case of Adeline Koku Anifa and Joanitha Sikudhani Anifa vs. Byarugaba Alex, Civil Appeal No. 46 of 2019 where the Court insisted that the Secretary of Ward Tribunal is not a member because he/she is not a person elected from amongst a list of persons resident in the Ward Tribunal but in terms of Section 4(2) of the Ward Tribunal Act, he/she is appointed by the Local Government Authority. She argued that Section 11 of the Land Disputes Courts Act Cap. 216 R.E 2019 provides for the Ward Tribunal to be constituted by not less than four and not more than eight members of whom three shall be women elected by a Ward Committee in accordance to section 4 of Ward Tribunals Act. She prayed for the court to quash the decisions of the trial Ward Tribunal and that of the District Tribunal. A /1 L 3 |Page Mr. Mbuli replying to the above arguments, he admitted that a secretary is indeed not a member of the Ward Tribunal and hence he/ she cannot constitute quorum of the same. However, he contested that the appellant wrongly cited section 13 of the Land Disputes Courts Act but the proper provision in this matter is Section 14 (1) of the same Act which provide for requirement of female member when the Tribunal is exercising mediatory function. He argued that, as to the present matter, when the trial Tribunal was handling this matter it was adjudicating the same and not doing mediation, therefore, the presence of female member was not necessary. Furthermore, he argued that Section 4 (1) and 4 (3) of the Ward Tribunal Act Cap. 206 do not provide for requirement of women member to form party of the composition of the Ward Tribunal. Section 14 (1) of the Land Disputes Courts Act, (supra) provides for the quorum or the composition of the Ward Tribunal in all matters of mediation. However the Court need to take a keen eye on the function of the Ward Tribunals in land matters. To my view the Ward Tribunal judicial functions in land matters includes one of mediation for the purpose of settling the disputes amicably between the parties. In my opinion, the trial Ward Land Tribunal violated Section 14 (1) of the Land Dispute Act, Cap. 216; which provide for the composition or quorum of the Ward Land Tribunal. The law states dearly that in all matters of mediation the Ward Land Tribunal shall be constituted by three members at least one of whom shall be a woman. The section provides as follows, I quote; Jul fl 4|Page "14(1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman." I have keenly perused the record of proceedings and the decision of the trial Ward Tribunal and observed that the quorum was not in accordance with the law. There was a Chairman by the name of SALUM S. HOVILA. A Secretary in the name of FARAJA M. CHUMA and two members, namely; SHABANI BIGE and NABOTI MUHOZA. Among the four mentioned above, the female was a Secretary one Faraja Chuma. The appellant has challenged that the secretary of the trial Tribunal that she

is not a member of Tribunal, however the respondent's counsel has argued that the women member is only required when the matter comes for mediation and not in adjudication as the present one. I disagree with the learned counsel for respondent, for the reason already explained inhere above that, Wards Tribunal were established for the purpose of mediation not adjudication that is why they have no executory enforcement authority. When the matter is before the Ward Tribunal it is considered to be under mediation according to section 14 of the Land Disputes Courts Act. I do agree with the learned counsel for applicant on the sense that the secretary of the Ward Tribunal do not form part of the composition of the same, her/ his main duty is to act as Tribunal Clerk and not otherwise. The position under the Ward Tribunals Act Cap. 206 R.E 2002 clearly has not included the secretary member of the Ward Tribunals composition and. It provides^{^i^_} to be a i that; 5|P age 4.—

(1) Every Tribunal shall consist of—

- (a) 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;
 - (b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).
- (2) There shall be a secretary of the Tribunal who shall be appointed by the local government authority in which the ward in question is situated, upon recommendation by the Ward Committee. From above provision of Law, it is clearly that the Ward Tribunal is composed by a four of eight members of Ward Tribunal elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner and the Chairman according to Section 4 (1) of Cap. 206. And secretary of the Tribunal is not a member of the composition of the Ward Tribunal. In my considered opinion, the trial Tribunal committed serious irregularities and substantially occasioned failure of justice to the parties and indeed the position of law is that any decision made by a wrongly constituted Ward Land Tribunal must be declared a nullity. The first appellate District Land and Housing Tribunal deliberated on a decision originating from questionable proceedings and perverse decision. A female membership position in the Ward Tribunal is not negotiable. 6|P age For the foregoing reasons, this appeal is allowed. The proceedings and decision of the Ward Land Tribunal of Maneromango in Land Dispute No. 13/2019 are hereby reversed and declared null and void. Consequently the decision of the first appellate District Land and Housing Tribunal of Kibaha at Kibaha in Land Appeal No. 71 of 2019 is equally declared a nullity and set aside. AND I hereby direct the case to be heard de-novo before a competent and legally constituted Maneromango Ward Tribunal to avoid unnecessary irregularities. No order for costs. It is so ordered. Dated at Dar es Salaam this 03rd day of November, 2021. 7|P age I

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