

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISC. LAND APPEAL NO. 3 OF 2016

*(From consolidated Land Appeals No. 53 of 216 and 57 of 216 for Land and Housing
Tribunal of Mbeya at Mbeya; Original Rujewa Ward Tribunal, case No. 785 of 2016)*

KASSIMU S/O NGOROKA..... APPELLANT

VERSUS

BERNARD S/O MASEMBULARESPONDENT

RULING

Hearing date 06/9/2018

Ruling date 07/09/2018

NGWEMBE, J:

This Petition of Appeal was called for hearing on 6/9/2018, both parties were represented by learned advocates. Mr. Aman Mwakolo represented the Appellant and Ms. Mary Gatuna represented the Respondent. Instead of hearing the appeal, Mr. Mwakolo made an oral application praying the appeal be struck out due the fact that the appeal is incompetent before this court.

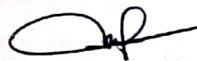


The genesis of the dispute is a piece of land allocated at Rujewa in Mbarali District within Mbeya region. The dispute was between one Benard Masembula of Mabanda area versus Ismail Ngoroka. The dispute was registered as Shauri la Madai No 785 of year 2016 before Ward Tribunal of Rujewa.

The composition of members of the Tribunal included the Secretary of the Tribunal, Mr. Sadala F. Mbela. The Tribunal proceeded to declare the Applicant Mr. Bernard Masembula the lawful owner of one part of the disputed land. Mr. Kassimu Ngoroka being dissatisfied with that decision, appealed to the District Land and Housing Tribunal of Mbeya at Mbeya. Also the Complainant appealed against the decision of the Ward Tribunal as appeal No. 53 and 57 respectively. The District Tribunal declared Mr. Benard Masembula the true owner of the whole disputed land and the appeal filed by Kassimu Ngoroka was dismissed. Being dissatisfied with that Judgement, Kassimu Ngoroka knocked doors of this court with a petition of appeal.

As stated above, the composition of members of the Ward Tribunal comprised a Secretary of the Tribunal contrary to section 11 of the Court Land Disputes Act Cap 216 R.E. 2002 which section read:

"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 Tribunal's Act".



Section 12 of the Act provide procedures of appointing Secretary to the Tribunal as provided for under sections 5 and 6 of the Ward Tribunal Act.

In the strength of these sections Mr. Mwakolo learned advocate rightly submitted that the appeal in this court is null and void and the whole proceedings of the District Land and Housing Tribunal and that of the Ward Tribunal are all nullity for the members of Ward Tribunal was not properly composed.

Judge Nchimbi in **Misc. Land Case Appeal No. 13 of 2008 between Venance Tengeneza versus Kawawa Mwapili** was confronted by similar situation of failure by the Ward Tribunal to compose proper members when determined a Land Dispute. The law requires, proper composition of the Ward Tribunal, must indicate names, gender and signature of each member, among members three must be women. Secretary to the Tribunal is not among members of the Ward Tribunal.

The members of Rujewa Ward Land Tribunal did not indicate their gender, since one cannot notice the gender of a person by name and signature and gender must be clearly indicated to comply with the Law. For clarity the Ward Tribunal defaulted the law in two areas namely; Secretary of the Tribunal is not among members of the Ward Tribunal and second, the gender of members was not indicated. For these two reasons, Mr. Mwakolo was right that this appeal is incompetent for it is founded under nullity



procedures. Likewise, the proceedings in the District land and Housing Tribunal were nullity for same were founded in unlawful decisions.

For the foregoing reasons, this appeal is struck out, each party to bear his own costs. **Order accordingly.**



P.J. NGWEMBE

JUDGE

07/09/2018

Court: Delivered at Mbeya in Chambers on this 07th day of September, 2018 in the presence of Aman Mwakolo advocate for Appellant and Ms. Mary Gatuna advocate for the Respondent.



P.J. NGWEMBE

JUDGE

07/09/2018