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**Ominde Sweta Versus Robert Manyama, The High Court of
Tanzania, Musoma District Registry, at Musoma, Land Appeal
No. 120 of 2020 (Unreported)
Case Review**

*Aron A. Kinunda**

1.0 Introduction

This case has attracted my attention to write a case review. In Tanzania, the law establishes separate machinery with exclusive jurisdiction to settle land cases. Ordinary courts, other than courts of record, other than courts of record, ordinary courts have no jurisdiction to entertain and determine land disputes.¹ Bodies vested with powers to hear and determine land disputes are Village Land Council, Ward Tribunal, District Land and Housing Tribunal, High Court of Tanzania and Court of Appeal of Tanzania. In this judgment, the High Court of Tanzania at Musoma (Galeba J.) makes a pertinent decision as far as the powers of the Village Land Council in determination of land cases are concerned. The decision in this case has the implication of vesting Village Land Councils with powers and mandates to make decisions which can be challenged by way of appeal to the Ward Tribunals.

2.0 Facts

The facts leading to the judgment can be briefly stated as follows. The case was before the High Court in its appellate capacity. The subject of the appeal was in respect of a piece of land located at Seka village in Nyamrandirira ward within Musoma district. The matter leading to the appeal originated from the decision of Seka Village Land Council (the Village Land Council), in which the respondent, Mr. Robert Manyama, was declared the lawful owner of the land. The appellant, Mr. Ominde Sweta, aggrieved by the decision, appealed to Nyamrandirira Ward Tribunal, contesting Mr. Manyama's victory in the

* LL.B, LL.M, PhD (UDSM). Dr. Aron Kinunda is a Lecturer at the University of Dodoma. He is also an advocate of the High Court of Tanzania and Notary Public and Commissioner for Oaths.

¹ Ordinary Courts in Tanzania are Primary Courts, District Courts, Courts of Resident Magistrates, The High Court of Tanzania, and the Court of Appeal of Tanzania. Out of these, courts of record are The High Court of Tanzania and the Court of Appeal of Tanzania.

Village Land Council. The Ward Tribunal called the file from the Village Land Council, but the file was not brought up.

Consequently, the Ward Tribunal decided to hear the matter afresh, which Mr. Sweta won. Mr. Manyama, dissatisfied with the decision of the Ward Tribunal appealed to the District Land and Housing Tribunal (the DLHT). The DLHT, on its side declared Mr. Manyama, the lawful land owner. This decision of the DLHT prompted an appeal before the High Court of Tanzania at Mwanza.

3.0 Procedural History

In the course of composing the judgment, the judge realized that what was presented to the Ward Tribunal was an appeal in which Mr. Sweta was challenging the decision of the Village Land Council. However, the appeal was not determined and the matter was reheard by calling fresh evidence. As a result, unlike the Village Land Council, which had declared Mr. Manyama the lawful owner of the land, the Ward Tribunal declared Mr. Sweta the owner. This made the judge observe that from the time the Ward Tribunal delivered its judgment there started to exist two competing decisions, one of the Village Land Council and that of Ward Tribunal, DLHT and the HCT in respect of the same land. Out of this background when the parties appeared for judgment, the judge called upon the parties to address it, specifically on whether the proceedings and decision in the Ward Tribunal were lawful in the circumstances.

The appellant, who had appeared in person, argued that the Ward Tribunal, before handling his appeal, was supposed to procure the records of the Village Land Council and consider them when determining his appeal. The respondent, represented by Mr. Baraka Makowe, learned advocate argued to the effect that in terms of sections 62, 167 and 2 of the Village Land Act [Cap 114 RE 2019], the Land Act [Cap 113 RE 2019] and the Land Disputes Courts Act [Cap 216 RE 2019] respectively, the Village Land Council is a land court. Its decisions need to be deemed competent, from which appeals may be preferred to the Ward Tribunal. However, there is no procedure for handling

matters in the Village Land Council or the Ward Tribunal. He submitted that because Mr. Sweta's appeal to the Ward Tribunal was supposed to be heard and decided; something which was not done, all that the Ward Tribunal and the District Land and Housing Tribunal did were a nullity.

The records of the Ward Tribunal indicated that the tribunal had tried to procure the records of Civil Case No. 03 of 2018 from Seka Village Land Council in vain as the Village Land Council arrogantly refused to forward the records to Nyamrandirira Ward Tribunal. The Tribunal then, with the consent of the parties, proceeded to determine the matter afresh. Evidence was taken, and the Tribunal reached its independent decision without considering the merits of the decision passed by the Village Land Council.

4.0 Issues

The main issue for determination before the High Court of Tanzania was solely the question regarding the jurisdiction of the Ward Tribunal and the legality of the proceedings and decision in the Ward Tribunal. The High Court judge called upon the parties to address whether the proceedings and decision in the Ward Tribunal were lawful in the circumstances.

5.0 The Holding

According to sections 167(1)(e) of the Land Act, section 62(2)(e) of the Village Land Act and section 3(1)(a) of the Land Disputes Courts Act, the Village Land Council is one of the land courts for purposes of land dispute resolution, and it is the court of the lowest grade in land matters. That section (sic.) confirms to this court that, indeed, the Village Land Council is a Court with jurisdiction to adjudicate land disputes. The appellate body of the Village Land Council is the Ward Tribunal established in a ward for all villages composing it. This means the Village Land Council makes a decision capable of being appealed against so that a party aggrieved may appeal or refer his grievance to the Ward Tribunal.

In this case, Mr. Sweta lost in Seka Village Land Council and appealed to Nyamrandirira Ward Tribunal, but the latter did not hear the appeal but tried

the matter afresh. Mr. Makowe submitted that it was illegal for Ward Tribunal to fail to consider the appeal and jump to rehearing the matter. Likewise, Mr. Sweta complained that his appeal was not heard. The judge observed that there is a valid decision of the Village Land Council to date.

6.0 Commentary

The observation by the High Court that there existed two competing decisions, one of the Village Land Council and that of Ward Tribunal is a misconception resulting in the wrong application of the laws at hand. With due respect, it is my argument that the judge wrongly applied the law to conclude that the Village Land Council is a court which can make an enforceable decision and that such a decision remains binding and enforceable unless it is appealed against.

In the first place, the judge was right in observing that according to sections 167(l)(e) of the Land Act, section 62(2)(e) of the Village Land Act and section 3(l)(a) of the Land Disputes Courts Act, a Village Land Council is one of the land courts for purposes of land dispute resolution, and it is the court of the lowest grade in land matters. However, the court failed to appreciate that the land courts established under the aforesaid provisions differ in their jurisdiction. In essence, the Village Land Council is supposed to receive complaints from parties in respect of the land; convene meetings for the hearing of disputes from parties and mediate between and assist the parties to arrive at a mutually acceptable settlement of the dispute over village land.² According to the law, the parties to a dispute over any village land may agree to call in the services of the Village Land Council or its member to mediate between and assist those parties in arriving at a mutually acceptable solution. This is in accordance with section 61(1) of Village Land Act which provides as follows:

61.-(1) Where any villager or person residing or working in a village or the village council or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 has a dispute with any other villager or person residing or working in a village or with the village council

² Section 7 of the Land Disputes Courts Act (*supra*) and section 60(1) of the Village Land Act (*supra*).

or a non-village organisation within the village or a person coming within an agreement made under section 11 or an arrangement made under section 58 over any matter concerning village land within that village or land to which section 11 or 58 apply, **all parties to that dispute may agree to call in the services of the Village land council or its member to mediate between and assist those parties to arrive at a mutually acceptable solution to the dispute.**³

This is complemented by section 61(3), which requires the convener of the Village Land Council to use his best endeavours to persuade all parties to the dispute to make use of the services of the Village Land Council or one or more of its members to act as mediators in the dispute. It is also important to note that the law categorically prohibits a person from being compelled to make use of the services of the Village Land Council for mediation in any dispute concerning village land.⁴

A holistic reading of these provisions leads to the conclusion that the function of the Village Land Council is that of mediation and not of imposing decision on the parties. Therefore, mediation is the main function of the Village Land Council. This implies that the decision of the Village Land Council is an outcome of mediation. Generally, the , parties and not the mediator, decide the mediation. The mediator assists the parties in reaching their mutually agreed settlement. This dictates that the decision of the Village Land Council is not capable of being appealed against.

The judge in reaching this decision was guided by the provision of section 9 of the Land Disputes Courts Act⁵ which provides as:

9. Where the parties to the dispute before the Village land council are not satisfied with the decision of the Council the dispute in question shall be referred to the Ward Tribunal in accordance with section 62 of the Village Land Act.

However, reading the provisions of sections 61 and 62(1) of the Village Land Act⁶, it goes without saying that the services of the Village Land Council are optional to the parties. This implies that parties are not bound to use the services of the Village Land Council. The parties may wish to cease it at any

³ Emphasis supplied.

⁴ Section 7 of the Village Land Act, Cap. 114 [R.E. 2019].

⁵ Cap. 216 [R.E. 2019].

⁶ Cap. 114 [R.E. 2002].

time and refer the matter to a court of competent jurisdiction. Section 62(1) provides:

62.-(1) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or wish to cease to make use of the services of the Village land council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.

It is important to take note and be cognizant of the following as far as Village Land Council's position in dispute settlement is concerned. First, parties are not compelled to use the services of the Village Land Council⁷; parties are at liberty at any time and at any stage of mediation to cease and withdraw their dispute from it⁸. Second, the Village Land Council has no powers to enforce its decisions, and there is no procedure for how appeals pass from it to the ward tribunal as the next land court in the ladder.

Conclusively, the Court, in this decision, is imposing a new jurisprudence not envisaged by the legislature. From the legislative provisions, the legislature intended the Village Land Council to serve as a mediator and not as a Court. While it is true that the Village Land Council is stated by law as one of the land courts, its functions state the difference. From what the Village Land Council is supposed to do, the Village Land Council is not a Court with powers to make enforceable decisions. Still, rather it is a mediator with powers to assist the parties in reaching to an amicable decision.

⁷ Section 61(6) of the Village Land Act.

⁸ Section 62(1) of the Village Land Act.