IN THE COURT OF APPEAL OF TANZANIA

AT MWANZA

(CORAM: MWARIJA, J.A, MUGASHA, J.A., And NDIKA, J.A.)

CIVIL APPEAL NO. 56 OF 2017

SOSPETER KAHINDI ..... APPELLANT

VERSUS

MBESHI MASHINI ..... RESPONDENT

(Appeal from the Judgment and Decree of the High Court of Tanzania at Mwanza)

(Gwae, J.)

dated the 28th day of April, 2015
in
Miscellaneous Land Appeal No. 120 of 2013
.....

JUDGMENT OF THE COURT

8th & 10th October, 2018

NDIKA, J.A.:

The question in this appeal is whether the judgement and decree of the trial Ward Tribunal of Igalula in Geita (the trial tribunal) are a nullity for want of pecuniary jurisdiction over a claim of ownership and possession of a piece of land. The District Land and Housing Tribunal of Geita at Geita (District Tribunal) and the High Court at Mwanza, on first and second appeals respectively, held in the negative, hence this third appeal.

Before the trial tribunal, the appellant lodged a claim for recovery of ownership and possession of a piece of land that he alleged to have been the property of his deceased's father, Kahindi Shija. At the hearing that commenced on 22nd June, 2013, he adduced that his mother had allowed the respondent to use the land in 2005 but that he did not have any title to it. The appellant produced two witnesses on 25th June, 2013, namely, Ng'humbu Lugoma and Kapolu Lugoma, whose testimonies substantially dovetailed with the appellant's assertion of title to the land in dispute.

Conversely, the respondent adduced that his father, Mashini Muhangwa, bought the disputed land in 1972 at the price of TZS. 10,000.00 from the said Kahindi Shija. Since then, he added, the said land was occupied and tilled by the Muhangwa family as their property. He refuted the claim that they were holding the land as mere licensees. His only witness, Kazimili Makangabila, who also testified on 25th June, 2013, confirmed his claim of title. The said witness adduced that he learnt of the purchase of that land by the said Mashini Muhangwa from the appellant's father, at the material time.

As the record of appeal bears it out, the trial proceedings closed on 29th June, 2013 with the trial tribunal visiting the *locus in quo* in the

presence of the parties. On that very day, however, the appellant appears to have had a change of heart on second thoughts. He submitted to the tribunal a letter dated 29th June, 2013, duly received on that day, stating that he had discovered that the subject matter of the dispute exceeded the pecuniary jurisdiction of the tribunal, which, by law, was limited to TZS. 3,000,000.00. He elaborated that the disputed land measured 96 acres and that its total value was TZS. 19,200,000.00 at the price of TZS. 200,000.00 per acre. He prayed that in the event of dispute over that valuation, then a formal valuation be done. He further implored that the ongoing action before the tribunal be terminated to allow him to institute a fresh action in the District Tribunal.

It appears that the trial tribunal did not act on the appellant's letter. It went ahead and handed down its judgment for the respondent on 9th July, 2013. The tribunal found it proven that the respondent's family bought the disputed land as alleged and that they had occupied and cultivated it for 41 years since 1972.

Resenting the trial tribunal's decision, the appellant preferred an appeal to the District Tribunal on six grounds alleging, inter alia, that the trial tribunal had no pecuniary jurisdiction to hear and determine the

matter and that its decision was against the cogency of the evidence on the record. The District Tribunal dismissed the appeal with costs as it was satisfied that the respondent proved long and uninterrupted possession of the disputed land for over forty-one years, which effectively extinguished the appellant's rival claim of title pursuant to the law of limitation. On the pertinent question of jurisdiction, the District Tribunal held thus:

> *"The issue of lack of pecuniary jurisdiction was not proved by any hard proof, hence the same is just empty words."*

Still dissatisfied, the appellant lodged a second appeal in the High Court at Mwanza on four grounds whose thrust replicated the same points of complaint that he had presented to the District Tribunal. Likewise, the said appeal bore no fruit; it was dismissed in its entirety with costs. The court confirmed the trial tribunal's findings that the respondent proved a long and continuous occupation of the disputed land and that the appellant's claim of title was barred by limitation. Specifically, the court expressed, on the question of pecuniary jurisdiction, that:

> *"I am not persuaded as to the alleged jurisdiction of the Ward Tribunal for the obvious reason as in the appellate tribunal that the appellant did not state*

the value of the land in dispute when instituting the dispute at the tribunal. Moreover, it is even surprising to see him raising this ground as he was the one who filed the matter and not the respondent, the one who could state categorically the estimated value of the subject matter and not the respondent. Apparently, it is clearly evident from the record of the trial tribunal that the appellant who was by then the applicant did not state the estimated value of the suit land. That being the position, I am unable to hold that the value of the land in dispute is more than TShs. 3,000,000.00."

The court went further and held that:

"Had the appellant established the value of the land in question and if the same exceeded Three Million [Shillings] it could follow that the Ward Land Tribunal would not have entertained it or would have wrongly entertained the matter ... As the record appears, nowhere there is evidence as to the value of disputed land. Thus the appellant's complaint is not legally founded and purely an afterthought."

As hinted earlier, this appeal raises the same complaint of want of jurisdiction, which was also certified by the High Court in terms of section 47 (2) of the Land Disputes Courts Act, Cap. 216 RE 2002 (the LDCA). It criticizes the learned High Court judge for disregarding the appellant's complaint that the trial tribunal had no pecuniary jurisdiction to try the case on the ground that he should have raised it at the trial.

At the hearing before us, both parties appeared in person, unpresented.

Having adopted his written submissions in support of the appeal, the appellant contended, in essence, that the trial tribunal lacked jurisdiction to try the matter in view of the value of the subject matter exceeding the statutory limit of TZS. 3,000,000.00. The disputed land, he elaborated, covered over 96 acres and that its total value was TZS. 19,200,000.00 at the rate of TZS. 200,000.00 per acre. He faulted the trial tribunal for not acting on his written request of 29th June, 2013 for termination of the proceedings to allow him to institute a fresh action at the District Tribunal which for him was the only competent tribunal to try the matter. The trial tribunal, he added, wrongly proceeded with the matter to finality without

investigating and determining the issue when prudence and justice required that the parties be summoned and heard on the issue.

In his written submissions, the appellant argued that apart from the position that the question of jurisdiction was a subject of paramount importance and that it could be raised at any time, even at an appellate stage, the said question in instant case was raised to the trial tribunal aptly and timely. However, much to his consternation the trial tribunal abdicated its obligation to investigate and determine the question. On that basis, he urged us to allow the appeal with costs and proceed to nullify the entire proceedings of the High Court and the two tribunals below to pave the way for him to institute a fresh action before the District Tribunal.

On the other hand, the respondent denied that the land in dispute measured 96 acres; he put it at 50 acres only. He argued that the value of the disputed land did not exceed the trial tribunal's pecuniary limit. He thus urged us to dismiss the appeal with costs.

Both the District Tribunal and the High Court were alive to the position that the pecuniary jurisdiction of the Ward Tribunal is limited by section 15 of the LDCA to all proceedings of a civil nature relating to land in which the landed property in dispute is valued up to TZS. 3,000,000.00.

At this point we would hasten to acknowledge the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision. We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction. Indeed, the erstwhile East African Court of Appeal sitting at Dar es Salaam held in **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at 202 that:

> *"All the courts in Tanzania are created by statute and their **jurisdiction is purely statutory**. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."* [Emphasis added]

Much as we agree that the issue of jurisdiction can be raised at any time, we think, in view of the orality, simplicity and informality of the procedure obtaining at the Ward Tribunal level, the appellant's concern on jurisdiction ought to have been raised at the earliest opportunity, most fittingly at start of the proceedings. It is noteworthy that in line with the applicable procedure, the parties did not exchange any pleadings and,

therefore, all questions for trial were based upon the claimant's oral statement of claim and the respondent's oral reply as recorded by the tribunal. Both parties, then, presented witnesses to establish their respective claims of title. As rightly held by the District Tribunal and confirmed by the High Court, no evidence was adduced on the pecuniary appraisal of the suit property apart from the respondent's declaration that his father bought that land in 1972 at the price of TZS. 10,000.00. In fact, not even its dimensions or acreage were stated by any of the parties, implying that the land might not be measuring 96 acres as alleged by the appellant. It seems to us that the proceedings at the trial were conducted (at least, until when the appellant lodged his letter of 29th June, 2013) on an implicit unanimity that the disputed land was within the pecuniary bounds of the trial tribunal. We are of the view that the jurisdictional issue raised could not be determined without evidence on the value of the subject matter.

We are, as a result, inclined to hold that the appellant's request for termination of proceedings came rather belatedly. For it was made on the day the tribunal visited the *locus in quo* after both sides had closed their respective cases. If the tribunal had accepted that overdue request, the proceedings had to be reopened as of necessity for taking evidence on that

issue. We would, therefore, support the learned appellate judge's holding that the appellant's belated request was an afterthought. Accordingly, we find no merit in the sole ground of appeal, which we now dismiss.

In the light of the foregoing, we uphold the decision of the High Court and dismiss the appeal with costs.

DATED at **MWANZA** this 9th day of October, 2018.

A. G. MWARIJA
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

S. J. Kainda
DEPUTY REGISTRAR
COURT OF APPEAL