IN THE COURT OF APPEAL OF TANZANIA
AT MTWARA

(CORAM: NDIKA, J.A., KEREFU, J.A., And KENTE, J.A.)

CIVIL APPEAL NO. 13 OF 2022

INDO AFRICAN ESTATES LIMITED ..... APPELLANT

VERSUS

KANGOLANJE HASSANI & 53 OTHERS ..... RESPONDENT

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

(Mlacha, J.)

dated the 5th day of June, 2017

in

Land Case Appeal No. 8 of 2016

JUDGMENT OF THE COURT

14th & 22nd March, 2022.

KENTE, J.A.:

This appeal arose from the proceedings commenced in the Lindi District Land and Housing Tribunal (henceforth the DLHT) where, the appellant company namely Indo African Estates Limited had lodged an application against the respondents one Kangolanje Hassan and 53 Others seeking, among other things, a declaration that it was the lawful owner of two pieces of land held respectively under Certificates of Title Numbers 13933 and 16092 located at Mkwaya Village Lindi District. In the said application, the appellant claimed that the titles over the two

pieces of Land (henceforth the suit land) were granted to them in 1960 and 1965 respectively and that for almost fifty years thereafter, they continued to enjoy peaceful occupation thereof until 15th September, 2011 when the same was allegedly invaded by the appellant and his supportive cronies. In addition, the appellant claimed that, they had their cashew nuts unlawfully harvested and the suit land divided among the respondents.

In the course of reply to the application, the respondents raised a preliminary objection contending, among other points, that the DLHT had no pecuniary jurisdiction to determine the dispute between the parties. They accordingly urged the said Tribunal to strike out the application for want of jurisdiction. However, after hearing the parties, instead of sustaining the preliminary objection and striking out the application as urged or dismissing it if he found it to have no merit, as is the norm, the trial DLHT found and held that, it was rather premature for the question of pecuniary jurisdiction of the DLHT to be determined at the preliminary stage as the Tribunal would require some evidence before it could proceed to determine the pecuniary value of the suit land. Accordingly, it was then decided by the chairman of the DLHT in his ruling that the issue of the pecuniary jurisdiction being fundamental,

could be raised during the trial and given foremost priority. However, notwithstanding such an attractive undertaking, when the application was called on for hearing, in way that was not expected, the learned chairman of the DLHT reneged on this crucial undertaking and went on to frame the following two substantive issues for determination, thus;

1. Whether the applicant is the lawful owner of the suit land; and
2. Whether the respondents have apportioned the suit land among themselves.

That being the case, in their respective evidence, both the appellant and respondents went on straightaway to grapple with the question of ownership without first and foremost leading evidence geared towards establishing the pecuniary value of the suit land as previously intimated by the chairman in his ruling on the preliminary objection.

Understandably, for his part, having reneged on his implied undertaking to give priority to the question of the pecuniary jurisdiction of his Tribunal, the learned chairman watched as though he had been merely a bystander. At the conclusion of the trial, without deciding

whether or not the DLHT was clothed with the pecuniary jurisdiction to handle the matter, but commensurate with the framed issues, he ruled in the appellant's favour finding, inter *alia* that, it was the lawful owner of the disputed suit land. As a consequence, the respondents were declared to be trespassers and accordingly ordered to vacate the disputed land within fourteen days of the judgment of the DLHT. Moreover, a permanent restraining order was issued preventing them from trespassing on the suit land. They were also condemned to pay the appellant TZS.10,000,000/= as general damages for the destroyed crops.

Aggrieved by the decision of the DLHT, the respondents appealed to the High Court at Mtwara where, Mlacha, J. having gone through their eighteen grounds of appeal, reduced them to seven and summarized them as follows;-

1. That, PW1 Said Ahmad Hamisi had no locus standi to file and verify the application as Director of the respondent company,
2. That, the ownership and validity of title No. 13933 and title No. 16092 was not properly examined by the Tribunal.

3. That, the evidence of the respondents at the Tribunal was contradictory on key aspects.
4. That, there was no evidence to prove trespass to the land.
5. That, the Tribunal was biased thereby failing to analysis (sic) properly the evidence brought by the appellants.
6. That, the Tribunal failed to note that the appellants were lawful owners of the land under the principle of adverse possession.
7. That, the Tribunal erred in failing to note that the appellants are lawfully occupying the suit land under customary law.

The learned Judge of the first appellate court did not stop there. He went on and identified two areas which he brought to the attention of Dr. Kamanija and Mr. Mtembwa, learned advocates who were respectively representing the respondents and appellant. In addition to the grounds of appeal which he had put in an abridged form, the learned Judge invited the two learned counsel to make their submissions which he believed would assist him to determine **one**, the physical location of the disputed land and its relation to Mkwaya Village

and **two**, the pecuniary jurisdiction of the DLHT and its relation with the value of the disputed land.

Having heard the relatively lengthy submissions made by the two learned counsel on the question of the location of the disputed land and the pecuniary jurisdiction of the DLHT which was called into question, the learned High Court Judge posed to himself something of rhetorical questions, thus;

> *"The question now is whether the farms with two title deeds, covering an area of 2,658 acres, part of it with coconut trees, within Lindi Region, which according to the evidence is not very far from the town, can have an estimated value of TZS.*50,000,000/=. ***In other words, can we say that a reasonable person in Lindi town can attach TZS.50,000,000/= as being the market value of the two farms?"***

Apparently, believing that he himself knew very well what the answers to the above posed questions were, the first appellate Judge went on to provide what he thought were the answers. Of great significance however, is the fact that he did not rely on the evidence on the record as the issue of the pecuniary jurisdiction of the DLHT was neither framed nor canvassed by the said tribunal. The learned Judge observed that;

"It is obvious that the disputed land could not be estimated by any standards at TZS.50,000,000/= ..... *What is obvious is that there was a serious undervalue (sic) of the suit land to fit the jurisdiction of the Tribunal. That is a bad practice which must be discouraged. It is my finding that the Tribunal did not have pecuniary jurisdiction to try the case."*

Consequently, the learned High Court Judge went on to allow the appeal, nullify the proceedings of the DLHT, vacate (sic) its judgment and decree, for want of jurisdiction.

The appellant company was dissatisfied with the judgment of the first appellate court and has come to this Court to fault the validity of the said judgment. Both Dr. Kamanija and Mr. Mtembwa learned advocates who respectively advocated for the respondents and the appellant at the trial and before the first appellate court, were retained to argue the present appeal.

On behalf of the appellant, Mr. Mtembwa preferred six grounds of appeal, three of which being directed to the holding by the first appellate Judge that this dispute falls outside the pecuniary jurisdiction of the DLHT.

Submitting in support of the said three grounds which, in our respectful opinion, are sufficient enough to dispose of this matter, Mr. Mtembwa attacked the decision of the first appellate court and, in our outright view correctly so, saying that the pecuniary jurisdiction of the DLHT was not one of the issues that were framed for determination during the trial and that, it was raised *suo motu* and determined by the learned High Court Judge without the necessary evidential material. For this reason, the learned counsel for the appellant asked this Court, in effect, to allow the appeal, quash and set aside the judgment of the first appellate court and remit the record to the DLHT for determination of, among others, the question as to whether the said Tribunal has the requisite pecuniary jurisdiction to entertain this matter.

Submitting in rebuttal, Dr. Kamanija was of the quite different view. He said that, even though the question of the pecuniary jurisdiction of the DLHT was raised *suo motu* by the learned High Court Judge, both parties were given the opportunity to submit on it. With regard to Mr. Mtembwa's argument that the appellant had at least given TZS.50,000,000.00 as the estimated value of the disputed suit land, Dr. Kamanija submitted that, mere estimation does not amount to proof of the actual value. Apparently, without knowing that he was in effect

drifting back to Mr. Mtembwa's position, Dr. Kamanija slightly wavered and submitted that, there was neither documentary nor oral evidence to prove the value of the disputed land. He contended further that, at any rate, the suit land together with its crops could not be valued at TZS.50,000,000.00 as estimated by the appellant.

In view of what was decided by the first appellate court and the position maintained by the respective counsel in this matter, the issue that we have to decide is whether, the learned High Court Judge was correct to hold as he did that, the proceedings before the DLHT were a nullity as it had no pecuniary jurisdiction to entertain this dispute.

We wish first to state in no uncertain terms that, we are acquainted with the position of the law that, the issue of jurisdiction is very fundamental and it may be raised at any stage as it lies at the root of all judicial functions. (See **PR Muganga Henry v. Said Boramungu** [2004] T.L.R 198 and **Michael Heseni Kweka v. John Elifa,** Civil Appeal No. 51 of 1997 (unreported). Therefore, it follows in our judgment that, before going on to determine the appeal on merit, the learned High Court Judge was not only quite in order but he was also obliged to take time and satisfy himself that the DLHT was seized with the jurisdiction to adjudicate the case giving rise to the appeal

before him. However, it appears to us that, in his endeavor to perform the duties of an appellate court, the learned High Court Judge lost sight of one important thing. It is common ground that the issue of the pecuniary jurisdiction of the DLHT was not new. It was initially raised as one of the preliminary points of objection but correctly reserved for determination after hearing evidence from the parties. Unfortunately, however, when the hearing before the DLHT commenced, this crucial point which was supposed to be given priority was inadvertently forgotten. This is evident from the record which shows that having been reserved so as to be given top priority during the trial, the question of pecuniary jurisdiction of the DLHT was neither identified nor framed as one of the issues that were to be canvassed by the trial Tribunal. In the circumstances, it goes without saying that, upon appeal, when the first appellate Judge stepped into the shoes of the trial Tribunal and made a judicial inquiry into the pecuniary jurisdiction of the DLHT, as correctly submitted by Mr. Mtembwa and impliedly conceded by Dr. Kamanija, he had no evidential material to rely upon. It was imperative therefore for the learned High Court Judge to let the parties lead evidence on that aspect before coming to the generalized conclusion that the suit land could not have the value of TZS.50,000,000.00 and that the appellant had artfully underestimated

its value so as to bring the dispute between the parties within the pecuniary jurisdiction of the DLHT. Of course, it also goes without saying that, it was not possible for the parties and their witnesses to lead evidence before the first appellate court. In the circumstances, it was incumbent upon the first appellate Judge to remit the matter to the trial DLHT with a specific directive that the matter be heard de novo. That would require the Tribunal to hear the evidence from both sides and make a decision determining, among other issues, whether or not it was clothed with the requisite pecuniary jurisdiction to handle the matter. Had this been done, we think the learned High Court Judge would have spared himself of the seemingly self-imposed laborious burden of establishing the value of the suit land by invoking the reasonable person benchmark which, as it turned out, was not necessarily free from error.

We think what we have said so far, sufficiently articulates what we said in **Ramadhani Mohamed v. Republic**, Criminal Appeal No. 112 of 2006 (unreported) where we pronounced ourselves that;

> *"We take it to be settled law, which we are not inclined to depart from that this Court will only look into matters which came up in the lower court and were decided; not on*

matters which were not raised nor decided neither by the trial court nor the High Court on appeal."

Having thus considered the arguments from both sides in this case, we think with respect that, what transpired before the DLHT excluded the first appellate Judge from inquiring into the pecuniary jurisdiction of the said Tribunal. He could not have looked into the matter which was not decided by the Tribunal and of which he had no evidence to support his factual finding.

For the foregoing reasons, having found merit in the three grounds, we proceed to allow the appeal, nullify the proceedings, and set aside the judgment and decree of the two lower courts. While we are mindful that unending court battles like the instant one, may cause uncertainty which does not bode well for the attraction of meaningful economic investment, in the circumstances of this case, we believe that in the interest of justice, an order for retrial will be a lesser evil. We therefore direct the DLHT to hear the matter de novo in which case it will have to determine, among other issues, the question as to whether or not it is clothed with the pecuniary jurisdiction to adjudicate the dispute between the parties. It is further ordered that, hearing of the application should be expedited and proceeded with before another

chairman assisted by other members. We will however, make no order as to costs in the present matter.

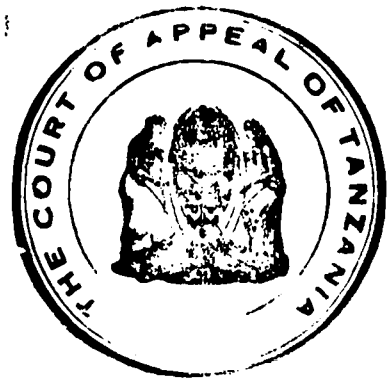
DATED at **MTWARA** this 21st day of March, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The Judgment delivered this 22nd day of March, 2022 in the presence of Mr. Hussein Mtembwa, learned Counsel for the Appellant and Mr. Hussein Mtembwa, holding brief of Mr. Lucas Charles Kamanija, learned Counsel for the Respondents, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL