IN THE COURT OF APPEAL OF TANZANIA
AT MTWARA

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

CIVIL APPEAL NO. 15 OF 2022

RASHID RASHIDI MNIPOSA.....APPELLANT

VERSUS

LYEHA JAMALI MSOI.....RESPONDENT

(Appeal from the Decision of the High Court of Tanzania at Mtwara)

(Dyansohera, J.)

dated the 13th day of December, 2019
in
Misc. Land Appeal No. 6 of 2018

JUDGMENT OF THE COURT

16th & 22nd March, 2022

KEREFU, J.A.:

This is a third appeal. It stems from the decision of the Ward Tribunal of Mihambwe (the Ward Tribunal), in the District of Mtwara within Mtwara Region, where the respondent sued the appellant for recovery of a parcel of land (disputed land) which was allegedly trespassed by the appellant.

It was the testimony of the respondent before the Ward Tribunal that, he was given the disputed land as a gift by his father one Mzee Jamali who owned it since 1969. That, at some point, Mzee Jamali gave

Mzee Lumani, his friend, a portion of the disputed land for use and cultivation. Upon the death of Mzee Lumani, in 1986, his son unprocedurally sold the said piece of the disputed land without involving Mzee Jamali the owner of the said land. The respondent went on to state that, he has been using the disputed land for about fifteen years without any disturbance until 2014 when the appellant trespassed on it. The evidence of the respondent was supported by Musa Salimu Lichahwi (PW2) and Dadi Mayava (PW3).

On the other hand, the appellant claimed that he bought the disputed land from one Dadi Athumani Lumani in Dar es Salaam when the said vendor visited him at his office. Thereafter, and after paying a half of the purchase price, he was advised to initiate the process of survey and titling of the land so that he could be issued with a certificate of occupancy. He stated that he obtained the said certificate over the disputed land in 1988. Then, in 2002, he found the respondent trespassing on his land and he warned him. In 2014, the appellant engaged casual labourers to plant paddy on the disputed land but they were stopped by the respondent. He said that the size of the disputed land was about 20 acres.

Upon hearing both parties and visiting the *locus in quo,* the Ward Tribunal decided the matter in favour of the respondent and declared her the lawful owner of the disputed land. Aggrieved, the appellant unsuccessfully appealed to the District Land and Housing Tribunal (the DLHT) of Mtwara District vide the Land Appeal No. 107 of 2017 raising six grounds of appeal including the fifth ground which alleged that the Ward Tribunal had no pecuniary jurisdiction to entertain the suit over a parcel of land measuring about 20 acres and valued at TZS 20,000,000.00.

Having heard the parties, the DLHT found that all grounds raised by the appellant were devoid of merit. Specifically, on the issue of the size and value of the disputed land, the DLHT found that, the appellant did not raise those matters during the trial. That, apart from alleging that, the disputed land measured 20 acres and that he had processed a certificate of occupancy, the appellant, in his evidence did not produce the said certificate or any other document(s) to prove those facts. The DLHT relied on the decision in **Ali Abdallah Rajab v. Saada Abdallah Rajabu and Others** [1994] TLR 132 where the Court stated that: -

> *"Where a case is essentially one of the facts, in the absence of any indication that the trial court failed to*

take some material point or circumstances into account, it is improper for the appellate court to say that the trial court has come to an erroneous conclusion."

Finally, and based on the above authority, the DLHT upheld the decision of the Ward Tribunal and dismissed the appellant's appeal.

Again, and undaunted, the appellant appealed to the High Court vide Misc. Land Appeal No. 6 of 2018. The High Court, like the DLHT, had the view that the evidence adduced at the Ward Tribunal proved the matter in favour of the respondent. At page 136 of the record of appeal, the learned High Court Judge observed that: -

"I have gone through the record of the lower Tribunals, the grounds of appeal and the submissions in support and opposition. It is evident that it was not established as to how, when and from whom the appellant bought the land. If he bought it in 1984 as he wanted the court to believe, it was clear that the owner Mzee Lumani was in existence as he is alleged to have died in 1986. So, if he bought the land from a person other than the owner who is Mzee Lumani, then no title passed to him. Besides, the seller did not testify, no sale contract was produced and admitted in evidence and no witness to

the sale transaction was called in the Tribunal to testify... Furthermore, the evidence is abundant that the respondent has been using the area for a long time without interruption. This, the appellant admitted when he told the Ward Tribunal that it is the respondent who has been using the farm for 15 years. Besides, the two Tribunals came to a concurrent finding that is the respondent who is the lawful owner of the suit farm. This being the second appellate court, has found no material to make interference"

After making those observations, the learned High Court Judge also dismissed the appellant's appeal with costs. Undeterred, the appellant lodged the current appeal containing two grounds of complaints, namely: -

1. *That, the honourable Judge of the High Court erred in law and facts in deciding the matter without considering the issue of jurisdiction of the lower forum where the matter started; and*

2. *That, the honourable Judge of the High Court erred in law and in fact by not taking into consideration credible evidence presented by the appellant.*

On 16th March, 2022, when the appeal came up before us for hearing, the appellant appeared in person without legal representation. On his part, the respondent, though duly served did not enter appearance. Thus, the hearing of the appeal proceeded in the absence of the respondent under Rule 112 (1) of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules). It is noteworthy that, the appellant had earlier on lodged his written submission in terms of Rule 106 (1) of the Rules which he sought to adopt to form part of his oral submission.

Submitting in support of the first ground of appeal, the appellant faulted the learned High Court Judge and the DLHT for failure to observe that the Ward Tribunal did not have pecuniary jurisdiction to entertain the suit between the parties because the value of the disputed land exceeded TZS 3,000,000.00 prescribed by the law as the pecuniary jurisdiction for the Ward Tribunal. It was his argument that, in determining whether a court or a tribunal has power to entertain a particular matter, the issue of pecuniary jurisdiction cannot be dispensed with. That, having determined the dispute between the parties without having pecuniary jurisdiction to do so, had rendered the proceedings of the Ward Tribunal a nullity.

As regards the second ground, the appellant also faulted the learned High Court Judge for failure to subject the evidence on record to scrutiny and proper re-evaluation. That, the learned High Court Judge failed to consider the credible evidence submitted by the appellant which proved that he is the lawful owner of the disputed thus, he cannot be a trespasser on his own land. Based on those grounds, the appellant urged us to allow the appeal with costs.

Having carefully considered the grounds of appeal, the submissions made by the appellant and examined the record before us, we find it appropriate to start by pointing out that, this being a third appeal, the mandate of the Court to determine appeals of this nature is governed by section 47 (3) of the Land Disputes Courts' Act, Cap 216 R.E 2019 (the Land Disputes Courts Act) which provides that: -

> *"Where an appeal to the Court of Appeal originates from the Ward Tribunal the appellant shall be required to seek for the Certificate from the High Court (Land Division) certifying that there is point of law involved in the appeal."*

Following the above provision, we wish to note that, it is crucial that what comes by way of an appeal be certified as a point of law and not fact.

We say so, because factual matters require evidence and are dealt with conclusively by the courts below. See our previous decisions in **Hezron M. Nyachiya v. Tanzania of Industrial and Commercial Workers and Another,** Civil Appeal No. 79 of 2001 and **Yakobo Magoiga Gichere v. Peninah Yusuph,** Civil Appeal No. 55 of 2017 (both unreported). In **Yakobo Magoiga Gichere** (supra), we categorically emphasized that the grounds of appeal filed in the Court must substantially conform to the points of law which the High Court has certified.

In the appeal at hand, we have noted that the appellant's second ground of appeal indicated in the memorandum of appeal, was not among the points of law certified by the High Court. It is on record that the High Court (Ngwembe, J.) only certified the following point of law: -

> *"Whether the farm measuring 20 acres valued about TZS 20,000,000.00 can be determined by a Ward Tribunal."*

In that regard and being guided by the above authorities, we will only consider the first ground of appeal.

In that ground, the appellant's complaint is to the effect that the Ward Tribunal did not have the prerequisite pecuniary jurisdiction to

entertain the suit between the parties because the value of the disputed land was TZS 20,000,000 and that it had a certificate of occupancy.

It is on record that during the trial before the Ward Tribunal both parties did not raise the said matter and the Ward Tribunal determined the dispute to its finality in favour of the respondent. On appeal to the DLHT, the appellant raised it but, being a matter of facts, which was not determined by the Ward Tribunal, the DLHT found it improper to fault the decisions of the Ward Tribunal on matters which were not brought before it. It is also on record that the said issue did not feature in the appellant's grounds of appeal before the High Court.

It is our considered view that, since parties to the suit in the Ward Tribunal submitted themselves to the pecuniary jurisdiction of the Ward Tribunal with no eyebrow raised on the said issue then, to us that was quite sufficient.

In the circumstances, and taking into account that the issue of pecuniary jurisdiction was not raised and determined by the Ward Tribunal and there is indication that the appellant and the respondent agreed and submitted themselves under the pecuniary jurisdiction of the Ward Tribunal, we find the first ground of appeal to have no merit.

In the event, we find the appeal devoid of merit and it is hereby dismissed with costs.

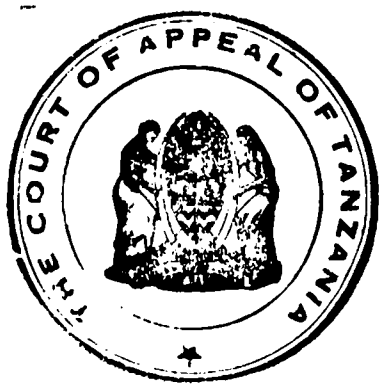
DATED at **MTWARA** this 22nd day of March, 2022.

G. A. M. NDIKA
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEA

P. M. KENTE
JUSTICE OF APPEAL

This Judgment delivered on 22nd day of March, 2022 in the presence of Mr. Nurdin Bwatam on behalf of Mr. Rashid P. Mniposa, learned counsel for the appellant and in the absence of the Respondent is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL