

IN THE HIGH COURT OF TANZANIA
AT MOSHI

(DC) CIVIL APPEAL NO.4 OF 2006
(RM CIVIL CASE NO.3 OF 2004
C/F MISC.CIVIL APPEAL NO.24 OF 2004)

<p>1. THE REGISTERED TRUSTEES OF BAKWATA</p> <p>2. SECRETARY BAKWATA MWANGA DISTRICT</p> <p>3. SAID NYANGE</p>	}APPELLANTS
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VERSUS

THE REGISTERED TRUSTEESRESPONDENT

JUDGMENT

HON. S. E. MUGASHA, J

The appellants were defendants in Civil Case No.3 of 2004 which was filed in the Lower Court in March 2004. The matter was heard exparte and judgment entered against the appellant, who being aggrieved with the

decision of the Lower Court have appealed to this Court raising nine grounds of appeal.

The fifth ground of appeal pertains to a point of Law that the Resident Magistrate Court lacked jurisdiction to entertain the suit, and the parties were ordered by the Court to submit on that ground only.

The appellant in the fifth ground of appeal assert that the Magistrate had no jurisdiction to entertain the matter whose main bone of contention was the ownership of the Mosque and not the Management of the same or the alleged unlawful occupation.

Prof. Itemba representing the appellants submitted that the Resident Magistrate had no jurisdiction to determine the Civil Case because ordinary Courts ceased to have jurisdiction on landed matters with effect from 1st October, 2003 pursuant to Government Notice 223 published on 8th August 2003, and the same brought into force. Land Dispute Settlements Courts Act No.2/2002 which inter alia established Land Division and Tribunals of the High Court vested with jurisdiction of determining land cases.

Prof. Itemba also submitted that it being that the Registered Trustees were amongst the defendants then the same cements on the

same a landed matter as the intention of having the Trustees incorporation Ordinance was to have in place a mechanism owning land to the Incorporated trustees as expressed under Section 6 of the Ordinance.

Mr. Shaaban, learned Advocate for the Respondent in reply to Prof. Itemba's submission argued that this was not a land related matter but one relating to the Management of the Mosque and the Civil Case No.3 of 2004 and was aimed at wrongful seizure of the Management of the Mosque which was in the hands of the Respondents, who according to their.

Constitution were legally elected and registered as trustees of the Mosque and entrusted with the Management and daily routine operations of the Mosque including prayers. Moreover, Mr. Shaaban also argued that the functions of trustees are not limited to land related matter but several functions amongst which being land ownership.

A point for determination the Resident Magistrates Court had jurisdiction to determine Civil Case No.3/2004.

A brief background to this appeal is that the Respondent sued the Appellants in civil suit No. 3 of 2004 praying for:

- (a) Declaration that seizure of management and occupation of Masjid Nuru Mriti Mosque and office by the appellants is unlawful
- (b) That the appellants or their agents or committee should surrender the management of the said Masjid Nuru.
- (c) That a permanent injunction be granted against the appellants restraining the same or their agents from interfering with the Management, operations and activities of Masjid Nuru Mriti.

As earlier stated the case was heard exparte and Judgment was entered against the appellants whose prayers were granted as prayed for in the plaint.

The interpretation section of the Land Disputes Courts Acts Cap 216 defines land as:

"land" includes the surface of the earth and earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land buildings and other structures permanently affixed to land."

Applying this definition to the case at hand civil case No.3 of 2004 is dispute centred structure permanently affixed to land and that is absolutely Masjid Nuru. That being the case, then in terms of section 13 of the Civil Procedure Code "Every suit shall be instituted in the Court of the lowest graded competent torty it Civil Suit No.3 of 2004 was filed in March 2003, pursuant to GN 223/03 published on ordinary Courts ceased to have jurisdiction to determine land Disputes section 4(1) of Cap.216 categorically states that

"Unless otherwise provided by the land Act, no Magistrate Court established under the Magistrate's Courts Act shall have civil jurisdiction in any matter under the land Act and the Village Land Act."

Section 167(1) of the Land Act states, Courts vested with jurisdiction to determine land disputes and the District Court. Section 167(1) of the Land Act does not mention the District Court to be amongst Courts vested with jurisdiction to determine Land related disputes.

Civil Case No.3/2004 was filed after coming in to force of Land Legislations which disentitles that case to enjoy what is provided under section 54(1) of the Land Disputes Courts Act Cap 216 which categorically states:

*54(1) Notwithstanding the provisions of section 55, proceedings
.....commenced in the Magistrates' Courts
.....which are pending on the date of commencement of
this Act, shall be continued, concluded and decisions and orders
made thereon shall be executed accordingly as if this Act had not
been passed."*

Thus, it being that Civil Case No.3/2004, which is a dispute related to land was filed in the District Court after the commencement of the Land Legislations, the District Magistrate did not have jurisdiction to entertain the matter. In terms of section 167(1) Courts vested with jurisdiction to determine land related disputes are Court of appeal, the Land Division of the High Court, the District Land and Housing Tribunals, Ward Tribunals and Village Land Councils. Therefore, the District Court is not amongst those Courts.

In the upshot of the aforesaid I allow the appeal, nullify the entire proceedings and judgment and direct the Respondents to file the case in a proper Court as provided under the Law. The Respondent shall bear the costs of this appeal.

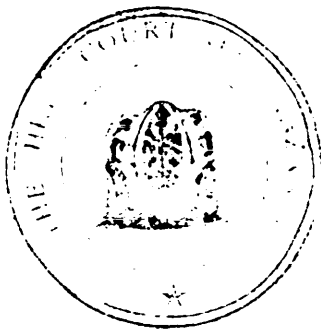
Right of Appeal explained.

S. E. MUGASHA

JUDGE

28/8/2007

Judgment delivered in the presence of Prof. Itemba for the appellants 1st and 3rd appellants and Mr. Bashir the Respondent.




S. E. MUGASHA

JUDGE

28/8/2007