

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

APPELLATE JURISDICTION

CIVIL APPEAL NO: 125 OF 2005

*(Arising from Bunda District Court Civil Appeal no: 16/2005
originating from Ikizu Primary Court civil case no: 88/2004)*

NG'OMBE KETANDO.....APPELLANT
VERSUS

MWENYEKITI SERIKALI YA

KIJIJI BUKAMA..... RESPONDENT

JUDGEMENT

29/3 & 13/7/2007

SUMARI, J

The appellant Ng'ombe Ketando is appealing against the decision of Bunda District Court Civil Appeal no: 16/2005. In Ikizu Primary Court civil case no. 88/2004 respondent (Plaintiff) unsuccessfully sued the appellant (Defendant) for payment of a house rent at tune of 168,000/=. The respondent was dissatisfied by the whole judgement and successfully appealed to the District Court of Bunda which decision is being complained of by the appellant in this court.

The gist of the claims before the trial court is that it is alleged that appellant sometimes in 1992 together with other villagers were

allowed to build small sheds in the village government land to run their business therein. The agreement reached was to the effect that upon the completion of the said sheds those builds (the Sheds) will become tenants and will be required to pay house rent after the expiry of 5 years of the usage of the sheds free from paying the rents.

It came to the attention of the respondent during his leadership that though there were minutes in regard of those given land to build such sheds, none of them was paying house rent as required. Respondent therefore called upon tenants to his office to settle the unpaid rents, appellant being among them.

Except the appellant all other tenants who had sheds ("vibanda") from the village government land responded to his call and paid the rent as required. Only the appellant turned into deaf ear an act which forced the respondent to institute this case. He therefore instituted this case on 04/10/2004 before the Ikizu Primary Court. Ikizu Primary Court dismissed the respondent's claim and upon his dissatisfaction he appealed to District Court which allowed his appeal. Appellant was dissatisfied, hence this appeal.

Before this court appellant raised two grounds:

1. That in as much as the dispute between the parties herein involve payment of rent, the Primary Court of Ikizu had no jurisdiction to hear and determine

the dispute, and the first Appellate Court should have held so.

2. That, the respondent herein had no locus to institute the claim of payment of rent in Ikizu Primary Court.

As I pointed out this case was instituted in the Primary Court of Ikizu on 04/10/2004. As well pointed out by the appellant in his both grounds of the appeal question of jurisdiction in this case must be determined and ought to have been determined at the earliest stage of the case. That the case is involving payment of rent and not only the rent since appellant is claiming the ownership of the said land. The matter therefore is involving land dispute.

Under the Land Dispute Courts Act, No. 2 of 2002 which came into operation on 1st October, 2003, all land disputes shall be instituted in the court having jurisdiction to determine land disputes in a given area. This is as provided for under section 3 (1) of the said Act, (supra). Sub- section (2) of section 3 provides for the courts of jurisdiction under sub- section (1) to include:

- a) The Village Land Council;
- b) The Ward Tribunal;
- c) The District Land and Housing Tribunal;
- d) The High Court (Land Division);
- e) The Court of Appeal of Tanzania

Similarly under section 4 (1), the Magistrates' Court established under the Magistrates' Courts Act, 1984 have no jurisdiction in any matter under the Land Act, 1999 and Village Land Act, 1999. It is therefore clear that in this case both lower courts had no jurisdiction to entertain the case. The proceedings of both lower courts are therefore quashed. The appeal is allowed. A party who is interested to pursue the claim, may do so, in the appropriate court with jurisdiction. I make no order to cost.


A.N.M. Sumari

JUDGE

At Mwanza,

13/07/2007.

Dellivered this 13th day of July, 2007 in the presence of both parties.