

**IN THE HIGH COURT OF TANZANIA
AT TABORA.**

**PC. CIVIL APPEAL NO. 64/2005
(Arising from Kasulu District Magistrate's Court Civil Appeal No.
1/2005
Original Kasulu Urban Primary Court Magistrate's Court
Civil Case No. 101/2004)**

LADISLAUS s/o GOLOGOZAAPPELLANT

Versus

IBRAHIM s/o NTAGALUGWARESPONDENT

J U D G M E N T

12th April.07 & 28th June, 07

MUJULIZI, J

This is an appeal from the judgment and decree in appeal of the Kasulu District Court in Civil Appeal No. 1 of 2005 which originated from Kasulu Urban Primary Court as Civil Case No. 101 of 2004.

It is common ground that the appellant was on 20/08/2001 allocated a piece of land by the Village Council of Kidyama within Kasulu Township and he proceeded to erect a house thereon. However, the area in question was surveyed by the Kasulu

Township and residential plots demarcated. The disputed area is known as Block “U”.

The respondent was allocated plot No. 985 and 986 Block ‘U’ and granted a letter of Offer to a Right of Occupancy over the Plots, on 24/4/2004.

Mr. Kayaga learned advocate has raised a preliminary issue as to whether the two lower Courts had jurisdiction in the matter.

The parties to the dispute were not represented by Counsel and they retained Counsel, only after this Appeal had already been filed in this Court.

It is common ground that Civil Case No. 101 of 2004 was filed long after, the Courts (Land Disputes Settlements) Act, No. 12 of 2002 had come into operation. That is on 01/10/2003 (GN. 223/2003).

Section 3 of that Act, read together with section 167 of the Land Act, (Cap 113) and section 62 of the Village Land Act, (Cap.114 R.E.2002) vest exclusive original jurisdiction to determine land disputes in a given area in the following Courts;

- 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.

Section 4 of Act No. 2/2002, expressly divests jurisdiction of Magistrate's court on Civil disputes relating to land in the following terms;

“4,-(1) unless otherwise provided by the Land Act, (Cap. 113 R.E. 2002), no magistrate's court established by the Magistrates' Courts Act, (Cap. 11. R.E; 2002) shall have Civil jurisdiction in any matter under the Land Act, (Cap.113. R.E.2002) and the Village Land Act, (Cap.114.R.E. 2002)”.

Mr. Mtaki learned Advocate for the Appellant has conceded to this, to be the correct position of the law. However, he submits that the proceedings before the lower court need not be declared null on the ground of lack of jurisdiction since there is no evidence adduced that the proceedings occasioned any injustice.

With respect to Mr.Mtaki, I do not subscribe to his reasoning. The effect of want of jurisdiction on any decision are quite clear. It is better summed up in the decision of Lucie-Smith, J in SAID BIBN SEIF V. SHARIFF MOHAMED SHATRY, (1940) 19(10) K.LR 9, at 10 in the following words;

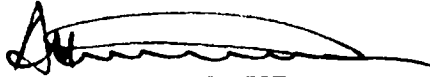
“If a court has no jurisdiction over the subject matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities and not only void able; they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the Court in which they are rendered, but shall be declared void by every court in which they may be presented. It is well established law that jurisdiction can not be conferred on a Court by consent of parties and any waiver on their part can not make up for lack or defect of jurisdiction. That being so, the point of jurisdiction may properly be taken in an appellate court and decided there even if it was not raised at the original trial.”

By the same provisions of the law, this Court would not have jurisdiction to entertain the appeal before it on merits at all. However, as held in the above quoted decision this Court has


inherent powers to declare the decisions of the lower court passed without jurisdiction null and void. They are so declared.

In the premises the proceedings, judgment and orders in Civil Case No.101/2004 before the Kasulu Primary Court and in DC. Civil Appeal No. 1/2005 before Kasulu District Court are and were a nullity. Either party, if he is so minded can start fresh proceedings in the proper forum.

Consequently this Appeal is hereby dismissed. Each party to bare his costs.


A.K. MUJULIZI
JUDGE
28/6/2007

Judgment read in presence of Mr. Mtaki, for the Respondent also holding brief for Mr. Kayaga learned advocate for the Appellant.


A.K. MUJULIZI
JUDGE
28/6/2007