

**IN THE HIGH COURT OF TANZANIA**

**AT TANGA**

**PC. CIVIL APPLICATION NO.8 OF 2011**

**[Originating from Civil Appeal No.1 of 2006 Muheza District  
Court, And Civil Case No.52 of 2004 Mbaramo Primary Court]**

**SAID WAZIRI.....APPELLANT**

**VERSUS**

**RAMADHANI MOHAMEDI KOMBO.....RESPONDENT**

**Date of last order: 13/6/2012**

**Date of Judgment: 3/8/2012**

**JUDGMENT**

**Teemba, J;**

The respondent, Ramadhani Mohamed, successfully sued the appellant in Mbaramo Primary Court for compensation of Tshs.1,000,000/= being the value of crops and plants planted in the appellant's farm. The appellant was dissatisfied with the decision and preferred his appeal in Muheza District Court. The appellate court dismissed the appeal for want of merit. Still dissatisfied, the appellant lodged this appeal challenging the lower court's decision under the following grounds of appeal:-

1. That, both the District Appellate Magistrate and Primary Court Magistrate, erred in law and facts when they failed to observe that the compensation of crops which the respondent is claiming from the Appellant, includes the house which was constructed by the respondent, in the said farm without the Appellant's consent,

therefore, the proper court should have been the Land Tribunal which is vested with jurisdiction to try on the matters in relation to land/house property.

2. That, the District Appellate Court, failed miserably to analyze the Appellant's evidence which amply shows that, the respondent was only engaged in clearing the shamba, the work which he was fully paid by the Appellant.
3. That, the District Appellate Court erred in law and facts when he failed to observe that, the claim of compensation of crops to the tune of Tshs.5,000,000/= was not proved by the respondent, and the same was on the high side compared to what was described by the Appellant in his evidence, that, the work assigned was only to clear the shamba and plant only one hundred orange seedlings which were paid for by him.
4. That, both the District Appellate Court and the Primary Court erred in law and facts, when, they failed to observe that, in disposing of the said shamba, the Appellant did not need to seek consent from the respondent nor to inform him, because, it was not his [respondent's] shamba.

The facts which gave rise to this case are briefly the following: The appellant purchased the farm in dispute and agreed with the respondent to

develop it. The respondent planted various crops in the farm and constructed a house thereon. The crops included permanent ones such as oranges. The appellant sold the farm to one Saidi Waziri when the respondent was away. This action irritated the respondent who decided to institute the claim for compensation in Mbaramo Primary Court. The trial court received evidence and ordered the appellant to compensate the respondent to the tune of Tshs.500,000/=. This decision was confirmed by Muheza District Court. Dissatisfied, the appellant lodged this appeal.

At the hearing of this appeal, Mr. Sangawe – learned counsel, represented the appellant whereas, the respondent appeared in person – unrepresented.

As regards the first ground of appeal, Mr. Sangawe submitted that the evidence on record reveals that the respondent instituted this suit claiming for compensation of crops, planting trees and construction of a house. The learned counsel further submitted that the respondent was claiming for land and therefore the proper forum was either the Ward Tribunal or the District Land and Housing Tribunal. He went ahead and stated that the respondent filed this suit in the Primary Court in the year 2004 when the Land Disputes Courts Act [Cap.216 R.E. 2002] was already in force. For these reasons, the learned counsel urged the court to nullify the lower courts proceedings, set aside the decision and allow the appeal.

Responding to the learned counsel's submissions, the respondent stated that he claimed for compensation of the crops he planted in the farm in dispute. He added that he also claimed for the house which he had constructed on the farm. The respondent contended that as a lay person, he did not know which court to approach.

I am of the settled mind that this ground of appeal will entirely dispose off this appeal. It is a principle of law that the issue of jurisdiction goes to the root of the subject matter and can be raised at any stage. The Court of Appeal in the case of **K.S.F. Kisombe vs Tanzania Ports Authority, civil Appeal No.2 of 2009**, unreported, Her Ladyship Kimaro, J.A. quoted with approval the holding of the same Court of Appeal in the case of **Richard Julius Rugambura vs Issack Ntwa Mwakajila and Tanzania Railways Corporation, Civil Appeal No.2 of 1998**. It stated:

*"The question of jurisdiction is paramount in any proceedings. It is so fundamental that in any trial even if it is not raised by the parties at the initial stages, it can be raised and entertained at any stage of proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it."*

In this suit, the record clearly indicates that the respondent claims for compensation which is associated to land. It is provided under **section 2 of both the Land Act [Cap.113 R.E. 2002] and the Village Land Act**

[Cap.114 R.E. 2002] that everything attached to land is also land. In view of these provisions of law, the Plants and a house are part and parcel of land. The proper courts for purposes of hearing and determining land disputes are listed Under **section 167 of the Land Act [Cap.113 R.E. 2002]**. The Pimary court and District Court are excluded from the list of the courts which are vested with jurisdiction to entertain land disputes. Having said so, I agree with Mr. Sangawe that the instant matter was entertained by the courts which had no jurisdiction to try the dispute.


In upshot, the appeal has merit. The lower court's proceedings are hereby nullified and the decisions thereon set aside. The respondent is at liberty to re-institute the case before the proper court vested with jurisdiction on the matter.

Given the circumstances of this case and the relationship between the parties, I decline to make any order for costs. Each party should bear own costs.



**R.A. TEEMBA, J.**  
**3/8/2012**

**Court:** The Judgment is delivered in the presence of both parties. Mr. Sangawe, learned counsel who is representing the appellant is also present.



**R.A. TEEMBA, J.**  
**3/8/2012**