

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPEAL NO. 12 OF 2011

(From the Decision of the District Land and Housing Tribunal of ILALA in Misc. Application No. 143 of 2009 Originating from Kiwalani Ward Tribunal in Case No. 53 of 2007).

ABDUL W. KHAN APPELLANT

VERSUS

MWANAID MUSSA RESPONDENT

J U D G M E N T

A.F. Ngwala,J.

This is an appeal from the decision of the Ilala District Land and Housing Tribunal. The matter originates from Kiwalani Ward Tribunal. In the said Ward tribunal, the Respondent, through her “Representative Attorney” one Othmani Madenge, sued the Appellant for a claim of landed property, Plot No. 170/A – Kipawa, in Dar es Salaam.

The trial Ward Tribunal heard the suit exparte. The Appellant who was then the Defendant in the trial Tribunal was not heard. The trial Ward Tribunal decided the Defendant/Appellant should forthwith yield vacant possession. When the Appellant became aware of that decision, which was delivered on 02/08/2007, He

filed an application to the District Land and Housing Tribunal praying for stay of execution of the decision of the Ward Tribunal. He also sought for Leave to appeal out of time against the decision of the Ward Tribunal. The application was filed in the District Land and Housing Tribunal on 11th May, 2010.

The District Land and Housing Tribunal dismissed the application for filing an appeal out of time and proceeded to grant the Respondent's application to execute the Ward Tribunal's decision. The applicant is aggrieved by the said Ruling. He has filed a Petition of Appeal which in essence is an appeal under the provisions of Section 24 of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, 2003. GN.174/2003.

In his Petition of Appeal the appellant filed seven grounds of appeal to challenge the decision of the District Land and Housing Tribunal. In summary, the appellant is challenging the jurisdiction of the Ward Tribunal, *locus standi* of the Respondent, the dismissal of the application to appeal out of time and the failure of the District Land and Housing Tribunal to consider the question of adverse possession and the unexhausted improvements made by

the Appellant on the suitland. With leave of the Court this appeal was argued by way of Written Submissions.

In support of the appeal the Appellant narrated the history of the suit property. In arguing for the grounds of appeal the appellant submitted that the District Land and Housing Tribunal erred in Law and fact in ordering execution to proceed without first considering whether the Ward Tribunal exceeded its jurisdiction specifically when considering the subject matter of the dispute is centered on an industrial Plot.

The Appellant further referred the Court to the Case of Rehema Hamisi and Others Vs. Fauzia Hussein Awadhi; Misc. Land Appeal No. 129 of 2009, (Unreported). In this case this Court held that “...It must be noted that all the Ward Tribunals in the cities and Municipalities in Tanzania are not competent Courts to determine all the manner of disputes, actions and proceedings concerning land....”. The Appellant further averred that the value of the subject matter to the suit is over Tshs. 500,000,000/= which is over and above the pecuniary jurisdiction of the Ward Tribunal and the District Land and Housing Tribunal.

The Appellant's counsel submitted further that the appellate Court has power to go through all evidence and draw its own conclusion. He supported this argument by citing the case of **Mariba Vs. Mariba & Another [2007] 1 EA 175 (CAK)**. Finally he averred that the District Land and Housing Tribunal erred in rejecting the application for filing an appeal out of time without considering the reasons for the delay and the of success of the appeal. This argument was supported by citing the cases of Samson .L. Kishosha Gabba Vs. Charles Kigumbo Gabba [1990] TLR 133 and Rajabu Kadimwa and Another Vs. Iddi Adam [1991] TLR 38.

In rebuttal, the Respondent through the service of Mr. Semgalawe learned advocate submitted that this Court lacks jurisdiction to entertain this appeal as it was erroneously filed in the High Court Registry instead of being filed in the District Land and Housing Tribunal as required by Section 38(2) of the Land Disputes Courts Act. Mr. Semgalawe further argued that the District Land and Housing Tribunal rightly refused to extend time

because he filed the application three years after the decision of the Ward Tribunal had been delivered. Mr. Semgalawe sternly submitted that the great chances of success of the appeal cannot be the only reason for extension of time. He supported this argument by referring the Court to the decisions of Inspector Sadiki & Others Vs. Gerald Nkya [1997] TLR 290 and Daphane Parry Vs. Murray Alexander Carson(1963) EA 546.

Lastly, Mr. Semgalawe submitted that the issue of jurisdiction of the Ward Tribunal Could not be entertained by the District Land and Housing Tribunal because it could only be entertained by an appellate Court or Tribunal, not an executing Tribunal.

After going through the above submissions, it is imperative to point out that I will not deal with the rejection of an application to file an appeal out of time because the Point has already been tackled. I will deal with the issue raised by Mr. Semgalawe that this appeal was improperly filed and the issue of jurisdiction of the trial Ward Tribunal. It is not in dispute that the provisions of Section 38(2) of the Land Disputes Court's Act require every appeal in the High Court in disputes originating from the Ward Tribunal

to be instituted/ filed in the District Land and Housing Tribunal. Mr. Semgalawe objects the authenticity of this appeal on the reason that it was filed in this High Court Registry. I differ with Mr. Semgalawe. It is clear from the records that when this appeal was filed the Respondent raised an objection that the appeal is incompetent because the Petition of appeal was not attached with the copies of Judgment and Decree of the District Land and Housing Tribunal. This matter was settled out and this Court pointed out that the appeal was lodged in the District Land and Housing Tribunal and it was the duty of the said District Land and Housing Tribunal to ensure the copies of Judgment and decree are attached to the Petition of Appeal .

On the issue of jurisdiction of the trial Ward Tribunal, it is my considered opinion that this is vital and a valid issue to be adjudicated upon regarding the decision of the Ward Tribunal and the proceedings of the District Land and Housing Tribunal, both in application for execution, stay of execution and application to appeal out of time.

The vital type of jurisdiction here is both the pecuniary jurisdiction, statutory and geographical jurisdiction, and the way the proceedings in the trial Ward Tribunal were handled. Section 15 of the Land Disputes Courts Acts expressly provides that the pecuniary jurisdiction of the Ward Tribunals should not exceed three million shillings. Section 10(1) of the said Act provides:-

“10(1) Each Ward Tribunal established under the Ward Tribunals Act, 1985 shall be a Court for purpose of this Act, the Land Act, 1999 and the Village Land Act, and shall have jurisdiction and powers in relation to the area of a District Council in which it is established.”

The law and or the statute which confers jurisdiction and powers to adjudicate on land matters is very clear, that is the Land Disputes Courts Act, [Cap. 216 R.E. 2002] recognizes the Ward tribunal established only within District Councils, and not in the cities or Municipal Councils. Hence that Ward Tribunal established in the councils in Municipalities and Cities act Contrary to the Law if they deal with Land Disputes under the Land Disputes Courts Act.

By looking at the file records from the trial Ward Tribunal of Kiwalani it is clear that the suit premises is located in a strategic area, an industrial area and it measures about 5599M². This is a fact which could not be over looked by both the trial tribunal and the Appellate Tribunal. It is on record, specifically in the Decision of the Ward Tribunal which clearly show that the Appellant has been in occupation of the disputed land since 1990 and that one Jacob Luidovick Chombo his guard/ Mlinzi has been taking care of the suit land since 22/02/1992, and that the appellant had constructed two houses, including a four bedroom house, Mango trees and coconut trees on the suit land. The tribunal has clearly indicated in its Judgment (*Baraza linashangazwa na vigezo vilivyompa kichwa mdaiwa kuhodhi kiwanja hicho bila ya hofu yoyote hadi kufikia hatua hii leo.*) . This is clearly show that the tribunals couldnot properly analyse the issues of limitation period, or prescription period, and the legality of the Appellant's Occupation of the suitland since 1979 when title No. 25270 was issued. The issues of rectification and or revocation of title, and the

unexhausted improvements on the suitland were not convased and or dealt with by the trial Ward Tribunal.

The issue of Jurisdiction of the Ward Tribunals should not be overlooked as it was emphasized, in the case of Meloisho Sindiko Vs. Julius Kaaya (1977) LRT No. 18, a Landmark decision in matters of pecuniary jurisdiction of Courts.

The facts of that case were that the suit was filed in the Primary Court for claim of Tshs. 2,000/-. The trial Court tried the case and gave Judgment for the Plaintiff. The trial Magistrate was not aware that he had no jurisdiction for suits exceeding Tshs. 1,000/=. On appeal, to the District Court the appeal was confined to the merits of the case and no challenge as to the jurisdiction of the Primary Court was raised. The District Court Magistrate allowed the appeal. The Plaintiff engaged an advocate and appealed to the High Court. At this stage the question of jurisdiction of the Primary Court was raised. The learned Judge determined the appeal on merits, that the restores the decision of the Primary Court to the extent that the Plaintiff was entitled to Tshs. 1,000/=

and gave the Plaintiff leave to bring fresh Proceedings in the District Court for the balance of his claim.

The Defendant appealed to the East African Court of appeal. In its decision the Court of Appeal, as per Law, V.P. Held thus:-

“Unfortunately it is clear, in my opinion that this appeal must succeed. The Primary Court had no jurisdiction to entertain the Plaintiff’s suit, and the proceedings in that suit was a nullity. The Primary Court would only have jurisdiction if the Plaintiff has limited his claim to Tshs. 1,000/=, and waives his right to claim the balance, which he did not do. Pecuniary jurisdiction to a Court’s jurisdiction cannot be evaded by bringing a series of suits, each within the court to jurisdiction. The learned Judge’s order to this effect cannot be supported, and in my view this appeal must be allowed and the Judgment obtained by the Plaintiff set aside as a nullity.”

With regard to the matter at hand, the trial Ward Tribunal had no jurisdiction to entertain the matter which was above its pecuniary jurisdiction and it was barred by the statutes. It follows therefore

that the proceedings of the District Land and Housing Tribunal are a nullity. The District Land and Housing Tribunal chairman had to consider the jurisdiction of the Ward Tribunal before entertaining the applications on their merits.

In view of the above, I allow this appeal. The decision, Proceedings and orders of both the District Land and Housing Tribunal and the Ward Tribunal are hereby nullified.

Costs are also provided to the appellant.




**A.F. Ngwala,
JUDGE,
19/03/2013.**

19/03/2013.

Coram : A.F. Ngwala,J.
Appellant : Mr. Wawa
Respondent : Mr. Semgalawe.
B/c; Jane.

Court: Judgment of the Court is delivered in the presence of Mr. Wawa and Mr. Semgalawe.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.


**A.F. Ngwala,
JUDGE,
19/03/2013.**