

“ORIGINAL”

**IN THE HIGH COURT OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA**

MISC. LAND APPEAL NO. 59 OF 2016

*(Land Appeal No, 133 of 2016, DODOMA District Land and Housing Tribunal,
original MNADANI WARD TRIBUNAL)*

MERYCIA LUTHER GELEGE APPELLANT

VERSUS

ASHERI NGALYA RESPONDENT

JUDGEMENT

Date of JUDGEMENT- 14/08/2017

Mansoor, J:

The Appellant was represented by Advocate Nchimbi while the Respondent was represented by Advocate Kusekwa. The Appeal was argued by written submissions.



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The matter originated from the Ward Tribunal of Mnadani where the Appellant herein lost, he filed an Appeal at the District Land and Housing Tribunal, he lost the appeal, and hence this second appeal. He raised four grounds of appeal as follows:

1. The person who appeared on behalf of the Respondent at the Ward Tribunal had no locus;
2. Principles of adverse possession cannot be made to apply on a surveyed land;
3. Customary Right of Occupancy cannot override the Granted Right of Occupancy;
4. The lower Tribunals failed to consider the strong evidence presented by the Appellant at the Ward Tribunal.



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On the first ground, the Appellant referred this Court to the case of **Lujuna Shubi Ballozi, Senior vs. Registered Trustees of Chama Cha Mapinduzi (1996) TLR 200 (HC)**, in which it was held that *“in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the Court has power to determine the issue but also he is entitled to bring the matter before the Court.”*

The Appellant submits that at the Ward Tribunal, the Appellant sued Asheri Ngalya Msoyo for trespass but he did not appear in the Tribunal, instead one Athumani Ngalya Msoyo appeared to defend the matter misrepresenting himself as Asheri Ngalya Msoyo. Athumani is the son of Asheri. The District Tribunal on appeal had held that Section 18 (2) of the Land Disputes Courts Act Cap 216 R: E 2002 empowers the Ward



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Tribunal to allow a party to be represented by a relative.

The Appellant states that on records of the Ward Tribunal, it is not shown whether Athumani was permitted by the Ward Tribunal to represent his father, but he was appearing as Asheri. The records of the Ward Tribunal referred Athumani as Asheri; they never considered him as the representative of Asheri.

The Respondent agreed that it was Athumani Ngalya Msolyo that appeared before the Ward Tribunal and he was actually representing his father, and that this is permissible under Section 18 (2) of the Land Disputes Courts Act, Act No. 2 of 2002. This section provides as follows:

18.-(1) No advocate as such may appear and act for
any party



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- (2) Subject to the provisions of subsections (1) and (3) of this section, a Ward Tribunal may permit any relative-or any member of the household of any part to any proceeding, upon request of such party to appear and act for such party.

The Appellant claimed that he was allocated the Land known as Plot No. 23 Block A Mbwanga Area in Dodoma Municipality in 1985 by the Dodoma Municipal Council. The Respondents also claims that he has been in occupation and use of the land since 1972.

I should first point out that where it is apparent that the evidence or record of proceedings had not been subjected to adequate scrutiny by the trial Court or first



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appellate Court, the second appellate court has an obligation to do so. If the issue of jurisdiction, and that of proper representation of a party at the Ward Tribunal, has not been properly determined by the First Appellate Court, the Second Appellate Court has a duty to looking to those issues.

The issue of whether or not the Respondent was represented by Athumani Ngalya Msolyo, I would say that under Section 18 (2) of the Courts (Land Disputes Settlements) Act, 2002, the Ward Tribunal may permit any relative or any member of the household to represent a party in the proceedings before it. This provision provides further that “....*upon request of such party to appear and act for such party.*”



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Looking at the record, I have not seen anywhere recorded that on the first day the suit or claim was heard, Asheri appeared before the Ward Tribunal and asked to be represented by his son or that Athumani requested the Tribunal to be permitted to represent his father. I also did not see any order of the Ward Tribunal permitting Athumani to represent Asheri.

At page 2, the records of the Ward Tribunal reads:

“Maelezo ya mlalamikiwa (mdaiwa)

Mimi Athumani Ngalia Msoyo (Asheri Ngalya Msoyo)

baba yangu Asheri Ngalia Msoyo ni mmiliki wa eneo

la shamba lililopo mbwanga tangia mwaka

1972.....”

Athumani Ngalia did not ask to represent his father, and the Ward Tribunal never permitted him to represent



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his father. He referred himself as Athumani as well as Asheri. This is not what is provided under Section 18 (2) of the Courts (Land Disputes Settlements) Act, 2002.

I'm not satisfied that the Ward Tribunal had satisfied itself that Athumani Ngalia Msoyo had full mandate to represent his father at the Ward Tribunal. He was actually impersonating himself as Asheri Ngalia Msoyo.

Again, although the issue of pecuniary jurisdiction was not raised but the Courts or Tribunals must satisfy itself that it has power to determine the dispute, the case of **Lujuna Shubi Ballozi , Senior** (supra) cited by the Appellant is relevant. Pecuniary jurisdiction is a statutory provision under the law, and Section 15 of the

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Courts (Land Disputes Settlements) Act, 2002 states and I quote:

“Notwithstanding the provision of section 10 of the Ward Tribunals Act, 1985, the Jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings.”

The law is trite that an objection that a Court has no jurisdiction to entertain a matter or action is a fundamental one and it can be raised at any stage of proceedings in the High Court, the Court of Appeal or at the trial Court by the parties or *suo moto* or by the Court itself.

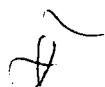
It is advised that because the issue of jurisdiction is regarded as a threshold issue and a lifeline for



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continuing any proceedings, objection to it ought to be taken at the earliest opportunity and a decision should be reached on it before any other step in the proceedings is taken, because if there is no jurisdiction, the entire proceedings are a nullity no matter how well conducted. However, a trial without jurisdiction is a nullity and the importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to the Court of Appeal or to this Court.

In this case, it is obviously that the parties were not represented at the Ward Tribunal. They could not by themselves know that the Ward Tribunal had a pecuniary jurisdictional limitation in trying land matters whose value exceeds THz Three Millions. Since the Court can suo moto raise the issue of jurisdiction, this issue could have been determined by the District



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Land and Housing Tribunal by ordering the parties to bring a valuation report. It is beyond the argument that the value of a house in Dodoma Municipality could be valued at Tshs three million or below that.

The issue of jurisdiction is paramount and can be brought to the attention of the court at any time, however, this court is court of record and since there has been no proof of the value of the land on record, this Court cannot assume the value of the land.

Lastly, the records of the Ward Tribunal shows that although the claim was lodged by Anna Minja Gellege (not a party to the proceedings) there is no record as to why the claim was lodged by her on behalf of the



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Appellant herein, or she was permitted to lodge the claim on behalf of her mother.

The Trial at the Ward Tribunal was conducted with a lot of irregularities and without ascertaining whether or not the Ward Tribunal had jurisdiction as the value of the land was not given. Thus the proceedings and judgement of the Ward Tribunal having been tainted with irregularities on jurisdiction and representation of parties, the proceedings and judgement of the Mnadani Ward Tribunal are quashed and set aside. Likewise the proceedings and judgement of the District Land and Housing Tribunal are quashed and set aside.

For the reasons given herein above, the appeal succeeds and first ground of appeal is allowed with costs, and the proceedings may be initiated afresh by any party with

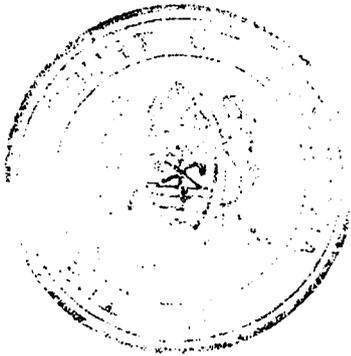


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locus and at the competent Tribunal in Court having jurisdiction.

Appeal allowed with costs.

DATED at DODOMA this 14TH day of AUGUST, 2017



L. Mansoor
L. MANSOOR

JUDGE,

14TH AUGUST 2017