

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

MISC. LAND CASE APPEAL NO. 36 OF 2016

(Originating from the decision of the District Land and Housing Tribunal of Arusha District at Arusha in Land Case Appeal No. 1 of 2015 and Original Ward Tribunal of Monduli Ward in Application No. 3 of 2014)

MBATIAN ALADAALA.....1ST APPELLANT

LEMANU ALADAALA.....2ND APPELLANT

VERSUS

LEMOSA KURAMBE.....1ST RESPONDENT

SINDIO KURAMBE.....2ND RESPONDENT

JUDGMENT

DR. OPIYO, J.

This appeal originates from the decision of Monduli Mjini Ward Tribunal where the respondents herein instituted a suit against the appellants for trespass to the suit land. The Ward Tribunal after hearing the parties declared that the disputed land belongs to the respondents and the appellants unsuccessful appealed to the District Land and Housing Tribunal, hence this appeal basing on the following grounds;

1. That, the Chairman of District Land and Housing Tribunal erred in law when it failed to notice that Monduli Ward Tribunal had no jurisdiction in entraining the matter in dispute.
2. That, the Chairman of the District Land and Housing Tribunal erred in law and fact when failed to notice that the appellants had occupied the suit land for more that 36 years and there was no evidence denying that fact, or any other justification contrary to that fact.
3. That Chairman of the District Land and Housing Tribunal erred in law and fact when failed to notice that appellant's witnesses were not hard (sic). And the complaints were on the court via letters dated 16 December, 2014 and 31st December, 2014 respectively.

Before this court, both the appellants were represented by Masawe learned Advocate from Legal and Human Rights Centre – Arusha while the respondents appeared in person and unrepresented. This court ordered the hearing of the appeal to be disposed of by way of written submissions. I appreciate efforts by both sides as they accordingly filed their written submission in accordance to the schedule.

Submitting on the first ground of appeal, the appellants argued that the suit land is located at Monduli Juu Ward while the matter was adjudicated at Monduli Town Ward ignoring the fact that both wards had Tribunals. He argued that the case was transferred from Monduli Juu to Monduli Town which is far off from the other and the reasons for transferring the case was not given to the Appellants. Therefore, it was stated that there was an error on geographical jurisdiction. On the other aspect of jurisdiction, he stated that the suit property was a piece of land measured 12½ acres and the value of each acre is 1,500,000/= therefore the total value of the suit land is about 18,000,000/=. Thus, it was stated that the Ward Tribunal of Monduli had no pecuniary jurisdiction to entertaining the suit land as the Ward Tribunals pecuniary jurisdiction is there million shillings (3,000,000 TZS).

Responding to this ground of appeal, the respondents submitted that the judgment of the District Land and Housing Tribunal of Arusha at Arusha is very clear that there is no Ward Tribunal in Monduli Juu Ward and that they are all using Monduli Mjini Ward Tribunal that is why they filed their dispute at Monduli Mjini Ward Tribunal. In regard to the issue of pecuniary jurisdiction, it was his submission that the disputed property is unregistered land, no valuation report has been tendered by the appellants before the trial tribunal to prove that the disputed property is valued more than three Million Shillings (3,000,000/=). Hence, he submitted that the estimated value was not an issue before the trial tribunal based on the reason that there is no

valuation report to prove the value of the suit land, hence submitted that the Ward Tribunal had jurisdiction to try the matter.

After determination of the issue of jurisdiction as discussed above, this court came across the matter that needs to be settled before setting in examining other grounds of appeal. Throughout the proceedings the evidence, including the respondents' own testimonies, points out that the land is of Kurambe Boma, respondents inclusive. This matter was brought to court by the above two respondents claiming ownership of the land in dispute. What depicted is that the respondents form part of Kurambe Boma, but they are not they are not the only ones forming that Boma. The first respondent is heard to refer to the disputed land as belonging to his father (not him personally) who was not a party to this dispute. This makes it clear that both of them do have personal ownership of the property they claim, if at all it is joint ownership by the whole Kurambe Boma. Across the trial proceedings, no proof of authority to the respondents to pursue the matter on behalf of Kurambe Boma in form of recognized agents (having power of Attorney), or administration of estate. Thus it is not clear under what capacity the respondent sued on for the land. for that reason it is the kurambe's boma as a whole who has a right of suing in relation to the disputed property.

It is a settled law that if a party seeks to claim a right through filing a suit in court against any person, he may do so in person or may do so through his recognized agent dully mandated to do so. Since the

respondents did not prove any of the mandates to institute this suit on behalf of Kurambe Boma, they lacked the necessary *locus standi* to institute the suit in question. The suit without the requisite locus stand lacks the leg to stand on for being incompetent before the court. thereforeas no competent suit was instituted in the trial tribunal, no appeal can validly emanate from it. In the circumstance, I struck out this appeal and proceed invoke revisional powers to nullify proceeding of both trial tribunal and first appellate tribunal. Anyone interested and with requisite *locus standi*, may still file the matter before a competent court over the same subject matter. I make no order as to costs as the matter that disposed of the appeal was raised by the court *suo motu*.

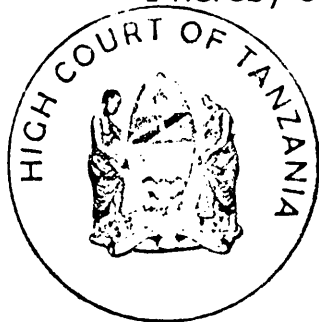
(Sgd)

DR. M. OPIYO

JUDGE

20/4/2018

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, appearing to read "A.K. RUMISHA".

A.K. RUMISHA

DEPUTY REGISTRAR

ARUSHA