

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 238 OF 2018**

*(Arising from the Decision of Kilombero District Court in  
Civil Case No. 17 of 2018)*

**ALLY JUMA KAPESA.....APPELLANT**

**VERSUS**

**MANG'ULA "A" VILLAGE COUNCIL.....RESPONDENT**

**JUDGMENT**

*Date of last order 27/09/2019*

*Date of Judgment 23/10/2019*

**NGWALA, J.**

The Appellant was aggrieved by the decision of the District Court of Kilombero which dismissed the case on the basis of lack of jurisdiction and res-subjudice.

The main argument to the ground of Appeal is that, the preliminary objection raised by the respondent was not based on a point of law, and that, the District Court of Kilombero did not consider the evidence and submissions by the Appellant, hence arrived at a wrong decision.

The brief facts leading to this appeal are that, the Appellant sued the Respondent for payment of Tshs. 10,000,000/= as specific

damages and Tshs. 42,943,785/= being general damages caused by the Respondent's institution of land proceedings against him.

At the hearing of this Appeal, the Appellant was represented by Rtd. Major Mbalasila learned Advocate, while the Respondent enjoyed the services of Mr. Libandama learned Advocate.

The Counsel for the appellant contended that, the Court had jurisdiction to entertain the matter as it was a normal civil suit on property destruction and not a land dispute. The property destroyed by the respondent was valued at the tune of Tshs. 2,943,785/=. During the trial there was no pending matter in any court or tribunal on the reliefs sought. It was elaborated by Rtd. Major Mbalasila that the suit that was originally filed at Mang'ula Primary Court for claims of compensation for property destruction, was transferred to the District Court of Kilombero. For this reason he prayed this Appeal to be allowed and the matter be determined on merit.

In answer to the Appellants' contention Mr. Libandama argued that the objection raised are on pure points of law. The plaintiff claims for general, specific and punitive damages amounting to Tshs. 10,000,000/= do not fall within the pecuniary jurisdiction of the District Court. The Court was requested to make reference to

the case of **Auto Garage Ltd v. Abdul Kadir Lutta Mohamed**  
**Civil Revision No. 3/2000** High Court of Tanzania a decision  
by Chipeta J(as he then was) that held:-

*"I now turn to the question of jurisdiction, needless to say that, the question of jurisdiction is not one of form. It is fundamental. A decision of the court which has no jurisdiction is no decision, it is nothing".*

The learned counsel argued further that, the Appellants ought to have instituted a taxation matter, instead of a civil case, because part of the claim by the Appellant as still pending at the District Land and Housing Tribunal of Kilombero in Misc. App. No. 173/2018. As the respondent had lodged matters concerning the same parcel of land in which the appellant claimed the respondent destructed his properties, they prayed the appeal be dismissed with costs.

Mr. Mbalasila rejoined by reiterating that, the Ruling reveals that, the matter or suit is about destruction of crops and not a land dispute.

Having heard the submissions of both counsels, the question is whether this appeal has merit or otherwise. Before deliberating on the said ground, I find it pertinent to quote excerpt of the Ruling by the trial court which reads as follows;

*"I have gone through the record of proceedings and submission. It is not disputable this case (sic) has no jurisdiction dispute arises on landed matter as per Land Dispute Act Cap. 216 section (sic) Land Act Cap.04/1999(sic) R: E 2002, Village Land Act Cap.05/1999 R: E 2002(sic) Magistrate Court R: E 2002(sic) As long as there is case pending at Land Tribunal Ulanga/Kiiombero, Plaintiff is advised to seek relief on land (sic)".*

Despite the clerical errors as they appear on the Ruling by the trial Court and citation of non existent laws, I am inclined to agree with the Counsel for the Appellant that, the trial Court misconceived and misdirected itself on reaching at the decision on those preliminary objections raised by the respondent.

The matter as argued by both parties is about property destruction and not a land dispute. The decision by the trial Court did not deal with the question of pecuniary jurisdiction of the Court at all. The trial court wrongly ruled the suit as land dispute, while on the face of pleadings it showed clearly that, it was a civil suit and not a land matter. More so, there is no proof in the record that there is a pending matter concerning the parties on this aspect.

I find it, therefore imperative to remind the counsels and parties that a Preliminary objection should be on pure point of law

capable of disposing of a suit, without proof of evidence as held in **Mukisa Biscuits Manufacturing v. West End Distributors Ltd (1969) EA 696.**

In my considered view, the second limb of objection that the case is pending in the tribunal, cannot be disposed as a preliminary objection on a pure point of law, as it requires evidence to prove that there is a pending matter before the alleged tribunal or otherwise. This one is not a pure point of law as it invites evidence to back up the argument.

In the premises, I find merit in this Appeal. I hereby quash the Ruling and Proceedings of the trial Court. The Appeal is accordingly allowed with a consequential order of trial *de novo*. Accordingly I hereby order *trial de novo* before another Magistrate in court of competent jurisdiction.

Appeal allowed with costs.



**A. F. Ngwala**

**JUDGE**

**23/10/2019**