

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

**LAND APPEAL No. 10 OF 2020
(Arising from Land Application No. 36 of 2018 of the Kahama District
Land and Housing Tribunal dated on 6th Day of March 2019)**

ELIZABETH MINZAAPPELLANT

VERSUS

PAUL MATIKU TUBETI.....1st RESPONDENT

ACCES BANK TANZANIA LIMITED.....2nd RESPONDENT

JUDGMENT

Date of the last Order: 28th April, 2020

Date of Judgment: 29th May, 2020

MKWIZU, J.:

1st Respondent had transacted and secured a loan from 2nd respondent mortgaging the suit premises allegedly a matrimonial property without the appellant's knowledge and consent. On being aware of the said transaction, and since the mortgage transaction was conducted without her consent as a spouse filed a land application at the District Land and Housing Tribunal for the following orders:

- i. a declaration order that the Appellant is the lawful co-owner of the suit premises.

- ii. the declaration order that the Mortgage Agreement between the first and second Respondents in respect of the suit premises is void and of no legal effect.
- iii. An order for temporary injunction restraining the second, their Agent and/or workman, and any other person of whichever description acting under their instructions from trespassing or otherwise interfering with the applicant's peaceful occupation of the suit premises.
- iv. General damage to the tunes of TSHS 15,000,00/=.
- v. Costs to follow the events.
- vi. Any other relief that this Honourable Court may deem fit.

The Tribunal dismissed the case for want of jurisdiction and parties were advised to knock the door of the ordinary courts where their matter would be entertained.

The appellant was aggrieved. She on 9th day of April, 2019 appealed to this court on the following grounds:

1. That the learned Trial Chairman erred in law and fact that the Kahama District Land and Housing Tribunal lacked Jurisdiction to entertain the Appellant's suit which is purely land dispute.
2. That the learned Trial Chairman erred in law and facts by finding that the Appellant's land suit arising from contractual relation between the 1st and the 2nd Respondents herein while the Appellant filed a purely Land dispute.
3. That the trial Chairman misdirected himself by deciding the matter on merit in preliminary stage of the suit.
4. That the trial Chairman erred in law by finding that the suit be dismissed want of jurisdiction contrary to the requirement of the law.

When the Appeal was called on for hearing, the Appellant was represented by Mr. Saraji Mussa Kwikima learned Advocate, the 1st Respondent appeared in person whereas the 2nd Respondent had the services of Mr. Gondo Amos also learned Advocate.

Mr. Kwikima, first, prayed to abandon ground 3 of the appeal and adopted the petition of appeal as part of his submission. Submitting on the 1st ground of Appeal, contended strongly that the Tribunal erred in law and facts by holding that it had no jurisdiction to entertain the matter which is a purely land dispute. He submitted that, the appellant filed a case at the District Land and Housing Tribunal complaining to have an interest in the suit premises as she was a spouse of the 1st Respondent and that one of their matrimonial home was mortgaged without her consent. The appellant requested the Kahama District Land and Housing Tribunal to declare one of the houses as a matrimonial house and the rest as matrimonial properties and therefore 2nd Respondent should not dispose of the said properties. He was of the view that the District Land and Housing Tribunal had jurisdiction as the complaint was a pure land dispute. He referred the court to section 167 of the Land Act and Land Dispute Court's Act Cap 216 and the cases of **Charles Rick Mulaki V. William Jackson Magero**, High Court Civil Appeal No 69 of 2017, **OLAM Tanzania Ltd & 3 Others V. Seleman S. Selema And 3 Other** Consolidate Civil Revision No. 2,3,4,5 & 6 of 2010 CAT (All unreported).

Mr. Kwikima argued further that appellant being a stranger to the contract between the 1st and 2nd respondent she could not challenge the same. He

challenged the advice by the District Land and Housing Tribunal that appellant should seek remedies in the ordinary court under the contract. He cited the case of **Puma Energy Tanzania Ltd V. Spec-Check Enterprises Ltd**, Commercial case No. 19 of 2014 at page 7 &8 (Unreported).

On the 4th ground of appeal Mr. Kwikima said, after it had concluded that it had no jurisdiction, the DLHT it wrongly dismissed the case instead of striking it out contrary to Order VII Rule 10 of the CPC which is applicable in DLHT via section 51 of the Land Disputes Court's Act Cap 216. He cited the case of Qamara **Kwaslema Gwareh V. Anwary & 2 Others** Civil Appeal No 92 of 2015 at page 9 (Unreported) to bolster his argument. He urged the court to allow the appeal with costs and the court order that the matter be heard by the DLHT.

On the other hand, Mr. Gondo submitted in full support of the Trial Tribunal's decision. He contended that the Kahama District Land and housing Tribunal had no jurisdiction to determine the application No 36 of 2018. He gave reasons that, the application was based on commercial transaction since it originated from the loan agreement which as defined under section 2 of the Magistrate court Act Cap 11 of 1984 R:E 2002 as

amended by the written laws (miscellaneous Amendment) Act No. 4/2004. He pointed out that, the appellant was moved by the contractual dispute between the 1st and 2nd respondent of which the appellant was not part to it. He cited the case of **Charles Rick Mulaki V. William Jackson** (Supra). On the same line of argument Mr. Gondo opined that cases cited by the counsel for appellant are distinguishable .

In rejoinder, Mr. Kwikima, essentially reiterated his earlier on position on this matter.

I have passionately given the parties submission as well as the grounds of appeal serious consideration. It is a common ground that this court is invited to see ***whether the District Land and Housing tribunal had jurisdiction to hear and determine the land Application No.36 of 2018 or not.*** To answer this issue the question ***whether the application that was presented at the DLHT was related to the loan agreement between the respondents or was a land dispute*** must get an answer. This is so because, DLHT's jurisdiction is only restricted on Land disputes.

To answer this, I will be assisted by the decision of **Exim Bank (T) Ltd V. Agro Impex (T) & Others**, Land Appeal No 29 of 2008 where the

court gave an insight on how to determine whether the claim is concerning land or not. It said:-

"Two matters have to be looked upon before deciding whether the court is clothed with jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two; you look at the reliefs claimed and see whether the court has power to grant them and whether they correlate with the cause of action".

I have carefully examined the records in Land application No 36 of 2018 to see whether the suit before the DLHT qualified to be a land Dispute. The appellant, in that application, had among others prayed for a declaration order that she is a lawful co-owner of the suit premises and therefore that the Mortgage Agreement between the first and second Respondents in respect of the suit premises is void and of no legal effect. Appellant had further to that stated in her application before the tribunal that she is a legal wife of the 1st respondent who had, through their joint effort built a residential house on Plot No. 384 Block E Majengo Kahama Urban Area which they occupy as a matrimonial house and together acquired other two plots Nos. 124 and 126 Block A at Sokola, Majengo in which through their joint efforts again built other two houses which are used as means of earning income for their family. To her dismay, and

without any notice, 2nd respondent trespassed to her house on Plot No 384 Block E Majengo claiming that the house is subject to sell by Public Auction because of the default by the 1st respondent to pay the debt. It is at this time that the loan agreement between the 1st respondent and 2nd respondent came to her knowledge.

It is obvious therefore from the above that the narrated facts revolves around the issues of trespass to land. The Appellant claims a proprietary interest over the suit premises as defined in the case of **Charles Rick Mulaki V. William Jackson** (supra) which is a pure land matter of which the District Land and housing tribunal has jurisdiction under section 167 of the Land Act and section 3 (1) of the land Disputes Court Act, Cap 216 R.E 2002.

In the view of the foregoing, I find the 1st and 2nd ground of appeal merits.


I would have ended here as the decided grounds of the appeal are capable of disposing of the entire appeal. However, I think it appropriate to say a word on the complaint in the 4th ground of appeal which challenges the dismissal order by the tribunal. As correctly submitted by both counsels in this appeal, after having found that it had no jurisdiction to adjudicate the matter, the Tribunal ought to not to have dismissed the matter , the

reason is that a dismissal order presupposes that a competent application has been disposed of, see the case of **Ngoni Matengo cooperative Marketing Union Ltd. V. Alimahomed Osman** (1959) EA.577. The tribunal should have resorted to the provisions of Order VII rule 10 (1) and (2) of the Civil Procedure Code Cap 33 R.E 2019. See also the case of **Qamara Kwaslema Gwareh (supra)**.


To that effect, this appeal is allowed, proceeding of the DLHT dated 6/3/2019 are quashed and the dismissal order set aside, the record of Land Application No. 36 of 2018 is remitted back to the District Land and Housing Tribunal for continuation from where it ended before another Chairman and another set of assessors. Costs to follow the events.

It is so ordered.

DATED at Shinyanga this 29th day of May, 2020.

 **E.Y.MKWIZU**
JUDGE
29/05/2020

COURT: Right of appeal explained.

 **E.Y.MKWIZU**
JUDGE
29/05/2020