

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL. NO. 31 OF 2018

*(Arising from Kahama District Land and Housing Tribunal in Land Appeal No. 37 of 2017
originated from Land Case No. 13 of 2017 of Masumbwe Ward Tribunal)*

WILLIUM SABUKA.....APPELLANT

VERSUS

SAFARI SIPEMBO.....RESPONDENT

JUDGMENT

Date: 1st Last Order: 8/3/2020

Date of Judgment: 29/5/2020

MKWIZU, J:

The facts of this case are straight forward. In the year 1999 respondent requested the appellant who was dealing with scrapers between Tanzania and Uganda, to help him in getting a Differential gear (Diff). Because the appellant had no money, he asked the respondent to give him cash 450,000 a purchase price of the said Diff. With the assistance of the Local Vigilant Commanda (Sungusungu) managed to secure the said money with the appellant's land pledged as security. Appellant did not do as per the agreement, he disappeared until the year 2000 when he resurfaced and promised to repay the money by 30th April, 2000 and if not, respondent

would take possession of the land in dispute. They, both signed the agreement titled 'Hati ya makubaliano' dated 22/2/2000. The appellant failed to honour the agreement, within the agreed period. Respondent took possession of the suit Land.

The records also reveal that, it was not until 2017 when the appellant stated to trespass into the suit land. Therefrom, respondent filed a criminal case for trespass vide Criminal case No. 41 of 2017 which was dismissed on 6/1/2017 as there was no finding as to who is a lawful owner. Parties were directed to lodge their claim with the appropriate Land tribunal.

On 4th April, 2017 respondent lodged his complaint with the land tribunal claiming to be owner of the land in dispute. The appellant refuted the claim. He said, respondent gave him 25,000 only and not the claimed amount of 450,000/= and that the agreement document was obtained by force at the sungusungu office where he alleged to have been bitten and tortured.

The respondent was successful at Masumbwe Ward Tribunal. The appellant was aggrieved, he lodged his appeal at the District Land and Housing Tribunal which again was in favour of the respondent. DLHT reasoned that

the appellant surrendered his land to the respondent for almost 17 years from 2000.

Discontented, the appellant has come to this court with a petition of appeal containing four grounds which are summarized that **one**, both tribunals erred in law to determine the respondent's complaint which did not disclose size and particulars of land in dispute. **Two**, that the appellate tribunal failed to evaluation the evidence adduced at the trial. **Three** that, the trial Tribunal's decision is a nullity for not being signed by members who heard and determined the matter and **lastly**, that the complaint was not proved on balance of probabilities.

At the hearing of this appeal, both parties were in person with no legal representation. Submitting in support of his appeal appellant argued that, the claim by the respondent that he gave him 450, 000/= was not supported by any document. He said, he was given 25,000/= and that instead of complaining to the court of his failure to repay the money, the respondent took him to Sungusungu (village Militia) who tortured him and forced him to sign the document purporting to having handled the respondent the land in

dispute. Appellant urged the court to re evaluated the evidence on records and allow the appeal.

In response to the appeal, respondent said he gave appellant a total of 450,000 in the year 1999. In the year, 2000, explained the respondent, appellant pledged the disputed land and agreed that the respondent would take possession if he (the appellant) fails to pay back the money. Since 2000 to date the land is on his hand and no complaint was lodged. He prayed justice to take its course.

In rejoinder, appellant submitted that there is no evidence to the effect that he took respondent's money. He contended that, he was not using that land as he had another land for use and that respondent was not using the suit land neither except for the year 2000 and 2001 where he used the land in view of recovering his 25,000/=.

I have given the parties' submission a serious consideration they deserve. Taking into account the general nature of this appeal, I find the question to be determined is whether both tribunal had jurisdiction to deal with the matter at hand.

It is not controverted that the dispute between the parties arose out of their agreement dated 2/2/2002. In the said agreement, appellant had an obligation to pay a total sum enumerated therein and failure to pay would have entitled the respondent to take possession over a property that was given as security, the suit land. By its nature, the dispute is more of a contractual not land.

The respondent's claim before the Ward tribunal was for enforcement of the agreement between the dual. The records are silent on whether parties had ever engaged the court or any tribunal with jurisdiction to see each one's right over the agreement. This is so because in order to arrive into a conclusion on the rights of either part on the said land, one must go into their original agreement and its terms and whether there was anything giving a part right over that land.

I am aware of the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. In the case **Sospeter Kahindi V. Mbeshi Mashini**, Civil appeal No. 56 of 2017 CAT-Mwanza (Unreported) Court of appeal held that:-

*"...parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction. Indeed, the erstwhile East African Court of Appeal sitting at Dar es Salaam held in **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at 202 that:*

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess. "

Land Tribunals have exclusive jurisdiction on matters concerning land under section 167 of the Land Act and section 3 (1) of the Land Disputes Court Act, Cap 216 R.E 2002.

I think, it is worth to note here that, the dispute between the parties in the case at hand arose from a breach of agreement where the land in dispute was a security. Going carefully through the records particularly the evidence by the parties, it is without doubt that, the debates is on whether there was any liability by the appellant arising from the said agreement and whether the said agreement resulted into passing over to the respondents' the appellant's right over the suit land. If that is not enough, while the

respondent claims to have given the appellant 450,000, appellant says respondent owes him only 25,000. Appellant alleges that the written agreement was obtained by force / coercion while respondents is on the opposite. All these issues have no answers and cannot be solved by the Land courts as they together arise from contractual responsibilities of the parties in which land courts lacks jurisdiction.

Page 3 of the Judgment of the District Land and Housing Tribunal states and I quote: -

"...that the appellant surrendered his land to the respondent and that if he will default by 30/04/2000 the respondent will enter into possession the only objection raised by the appellant was that he surrendered the same to the respondent upon inducement; the question to be asked is why he didn't report to any authority till 04/04/2017? and that is why he left the disputed land to the respondent almost 17 years from 2000."

The agreement of the parties (Hati ta makubaliano) the source of the dispute at hand reads:-

"Mimi William Sabuka nimemkabidhi ndugu Safari Sepembo shamba langu la ekari 3 leo tarehe 2/2/2000 mbele ya mashahidi watakaoandika majina yao chini. Kuwa shamba ni mali yake mpaka hapo nitakaporejesha fedha yake.

Mwisho wa mkataba itakuwa mwezi wanne 4/03/2000 kama nitashindwa kumpa atachukua shamba na sitadai au kutoa kitu chochote, naahidi mbele ya Kamanda Mkuu wa Kata ya Masumbwe Ndugu Juma Ganibashoda."

In the case of **Exim Bank (T) Limited V. Agro Impex (T) LTD & Others**, Land Case No. 29 of 2008 where the court held that,

"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 as to whether the court has power to grant them and whether they correlate with the cause of action....."

In striking out the case, the court said:-

"on looking at the prayers you will find that non is related to land. The mere fact that the second and third defendants have put some security for loan does not turn the suit to be a land dispute. Additionally, in my view, suing on an overdraft facility per se does not turn the suit to a land dispute and give this court the necessary jurisdiction... this suit is squarely based on a contractual relationship between a banker and consumer whereby the customer has overdrawn and failed to pay."

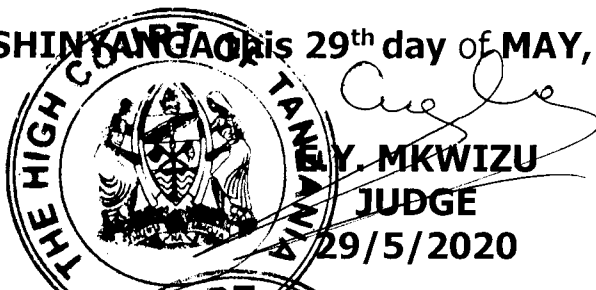
In another case of **Britania Biscuit Limited V. National Bank Of Commerce Limited & 3 Other**, Land case No. 4 of 2011 (unreported), High Court cited with approval the **Exim Bank Limited's case** (supra) and had this to say at page 14 of the said decision:-

"The mere facts that landed properties were mortgaged will not turn the matter to a land dispute. The matter is purely commercial in nature and it is an outcome of unperformed commercial transaction which is far away from the jurisdiction of the Land Division of the High Court."

I associate myself with the decisions of the court in the cited cases above. Having so said, I am of a strong conviction that the dispute between the parties herein is a contractual issue which is to be looked at by the ordinary civil court.

I therefore hold that this appeal has merit to the extent explained above. I hereby quash and set aside all proceedings and judgment of both District and Ward Tribunal. Parties are advised to file their dispute in the appropriate court. Cost to follow the event.

DATED at SHINYANGA on 29th day of MAY, 2020.



Court: Right of Appeal explained

