

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TABORA**

LAND APPEAL NO. 11 OF 2018

(Arising from Land Appeal No. 06 of 2018 Nzega District Land
and Housing Tribunal and Original Ward Tribunal of Igurubi
in Application No. 6 of 2017)

NDEKEJA KASHINJE APPELLANT

Versus

MBOJE MASUNGA RESPONDENT

JUDGEMENT

28/06/2019 - 28/2/2020

BONGOLE, J.

This is a second appeal, the appellant herein was also the appellant in the District Land and Housing Tribunal at Nzega after being aggrieved by the Igurubi Ward tribunal's decision which declared the respondent the lawful owner of the disputed land in the Land Dispute No. 06 of 2017. Over and above that, the appellate tribunal dismissed his appeal on 27/04/2018 and upheld the findings and decision of the trial tribunal. Anguished by the decisions of both tribunals, the appellant has come to this Court on appeal stating the following grounds:-

- 1. That, the appellate District Land and Housing Tribunal erred in law and fact to uphold the findings of the trial ward tribunal which trial decision is founded on the trial and determined of the same carried out without first determining its pecuniary jurisdiction to try the said land dispute.*

2. *IN THE ALTERNATIVE*, that in misdirection and non-direction of the evidence on record, both the appellate District Land and Housing Tribunal and the ward tribunal erred in law and fact to declare the respondent the lawful owner of the disputed land.

The appellant wherefore prays for this appeal to be allowed, later on nullifying both the decisions of the appellate and trial tribunals. Alternatively, the appellant be declared the lawful owner of the disputed land. Costs for this court and the lower tribunals be provided for and any other reliefs as the Court may deem fit to grant.

When the appeal came for hearing, the appellant enjoyed the Legal services of Mr. Mussa Kassim learned (Advocate). The respondent however did not enter appearance despite having been summoned several times. The learned advocate then prayed for an ex-parte hearing which was granted.

The appeal was disposed by way of written submission pursuant to the order of this court dated 28/03/2019.

Mr. Mussa Kassim made a submission in support of grounds of appeal as follows;-

He argued the first ground of appeal by stating that, the proceedings of the trial tribunal do not show if the ward tribunal bothered to determine whether or not it had pecuniary jurisdiction over the disputed land in the Land Application No. 06 of 2017. And that, the appellate tribunal fall in the same trap in Land Appeal No. 06 of 2018 when it proceeded without bothering to inquire if the trial tribunal had pecuniary jurisdiction over the disputed land.

The learned advocate further explained that failure of the lower tribunals to determine the issue of pecuniary jurisdiction has led to this ground of appeal before this Court, and that the issue of jurisdiction can be raised at any time of the case even at appeal level.

He cemented that, it is trite law and fundamentally recognized that courts of law or tribunals must hear and determine cases to which they are vested with jurisdiction. Henceforth, the proceedings and judgements reached thereof suffer the remedy of being nullified. He went ahead and cited the case of ***Philimon Nzinze Vs. Patrick Paulino Mikindo, Misc. Land Case Appeal No. 03/2015*** High Court at Tabora (Unreported) where the court at page 4 citing the **Court of Appeal of Tanzania decision** stated that;-

"The question that I pose to myself is therefore, whether or not the trial tribunal was justified in entertaining the dispute without first inquiring into and determining the monetary value of the suit land. In my view an inquiry and determination of the monetary value of a subject matter of any dispute in court or an adjudicating organ is a very significant step to be taken at the outset of the process of adjudication as underscored by the CAT in Richard Rukambura case (Supra). This view is based on the understanding that it is that the monetary value of the subject matter that determines the pecuniary jurisdiction of the court or the adjudicating organ."

He continued submitting by quoting from *Philimon Nzinze's case* (Supra); that;-

That it was obligatory for the trial tribunal to first inquire into the monetary value of the subject matter of the disputed land for the purposes of determining its own pecuniary jurisdiction before it proceeded to try the matter. There is also no indication that the trial tribunal bothered to inquire into that monetary value and determine whether it had jurisdiction to try the case or not."

The advocate deduced this ground of appeal by saying that both the trial and appellate tribunal vividly showed lack of inquiry as to pecuniary jurisdiction of the ward tribunal before hearing and determining the dispute between the parties herein.

Moving to the second ground of appeal which was preferred by way of alternative, he had it that since the records of the trial tribunal are clear, that the evidence of the appellant herein carries more weight as compared to that of the respondent, in misdirection and failure to comprehend the quality of evidence on record, both the trial and appellate tribunal erroneously decided in favour of the respondent.

He prayed for this appeal to be granted.

Mr. Kassim deserves all accolades for his submission. After setting an eagle eye on the records of the trial ward tribunal and the appellate District

Land and Housing Tribunal, it has also come to my awareness that the records do not avail the monetary value of the land in dispute.

Section 45 of the Land Disputes Courts Act Cap. 216 provides that;-

"No decision or order of a ward tribunal of District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceeding before or during the hearing or in such decision or order or on account of the improper admission or rejection of evidence has in fact occasioned a failure of justice."

However, the issue of jurisdiction goes down to the roots of the court in administration of justice. Consequently, the trial tribunal tried the case with uncertainty of its jurisdiction, that omission as correctly submitted by Mr. Kassim is a fundamental irregularity whose the only remedy is to quash the proceedings and order retrial. See the case of ***Tatu Juma Vs. Chiku Iddi, Misc. Land Case Appeal No. 40 of 2014***, High Court at Tabora (Unreported).

That been said, this appeal is allowed, the proceedings and decisions of the trial and appellate tribunal are hereby nullified with an order for re-trial before a competent tribunal subject to the Law of Limitation. No order as to costs.



A handwritten signature in black ink, appearing to be "S.B. Bongole", is written over a horizontal line.

**S.B. BONGOLE
JUDGE
28/02/2020**

Judgement delivered under my hand and seal of the court in chambers, this 28/02/2020 in the presence of Ms. Flavia Francis learned Advocate Holding a brief of Mr. Mussa Kassimu learned Advocate for the Appellant and in the absence of the Respondent.

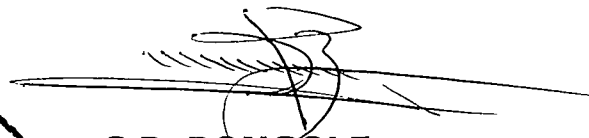
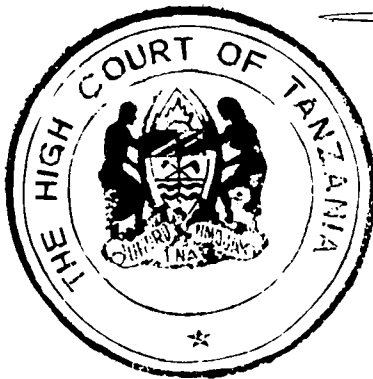


S.B. BONGOLE

JUDGE

28/02/2020

Right of Appeal is explained.



S.B. BONGOLE

JUDGE

28/02/2020