

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)**

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 68 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 48 of 2019 which originated from the decision of the Nyakato Ward Tribunal in Application No. 60 of 2018)*

**ALEXANDER MASHAURI ..... APPELLANT**

**VERSUS**

**SALA SAMWEL ..... RESPONDENT**

**JUDGMENT**

*4<sup>th</sup> August and 30<sup>th</sup> October, 2020*

**KISANYA, J.:**

This is an appeal against the decision of the District Land and Housing Tribunal for Mara at Musoma (the appellate tribunal) which reversed the decision the Nyakato Ward Tribunal (the trial trial). In its decision, the trial tribunal had declared the appellant as lawful owner of the land in dispute. The appellate tribunal reversed the said decision basing on a point of law that, the application lodged by the appellant before the trial tribunal was time barred. However, the appellate tribunal went on to declare the respondent as lawful owner of the disputed land. It is that decision which is being contested by the appellant in the present appeal. The grounds stated in the petition of appeal filed before this Court are as follows:

- 1. That, trial tribunal erred in law and fact for deciding that the case filed by the appellant is time barred.*

2. *That, the tribunal erred in law and fact for failure to consider that, the respondent adduced evidence before the ward tribunal that she know nothing concerning the land in dispute.*
3. *That, the tribunal erred in law and fact for failure to consider the Appellant evidence.*
4. *That, the tribunal erred in law and fact for failure to consider that there is no respondent land in the land in disputes.*

In the course of hearing and determining this appeal, the Court noted the following irregularities in the proceedings of the trial tribunal and appellate tribunal:

1. The opinion of assessors of the District Land and Housing Tribunal was not read or given in the presence of assessors.
2. The proceedings of the appellate tribunal do not show how the visit to locus in quo was conducted and whether the parties were asked to comment on the findings noted during the visit in quo.
3. The value of the land in dispute was not stated in the complaint and evidence adduced before the trial tribunal.
4. The records do not show members of the Ward Tribunal who were present at the visit to the locus in quo and whether both parties were present.

Therefore, since the above stated issues go to the root of this matter, I asked the parties to address the Court on the same and whether the proceedings of the lower tribunals were not vitiated.

At the hearing of this matter, the appellant enjoyed the legal services of Mr. Edson Philipo, learned advocate. On the other hand, Mr. Gervas Emanuel, learned advocate appeared for respondent.

As the practice demands the appellant was called first to submit on the appeal. Mr. Phillipop opted to drop the 2<sup>nd</sup> and third grounds. Arguing in support of the first ground, the learned counsel faulted the appellate tribunal for disposing the appeal on the ground of time limitation without hearing the parties on the said issue.

As regards the irregularities in appellate tribunal, Mr. Philipo argued that, the opinion of assessors was not read in the presence of the parties thereby contravening the provision of section 23 of the Land Disputes Courts Act, Cap.216, R.E. 2002 (the LDCA). He went on to submit that, the visit to locus in quo was not conducted in accordance with the law on the account that, the proceedings do not show the evidence adduced during the visit to locus in quo and the findings thereto.

In relation to the proceedings before the trial tribunal, Mr. Philipo pointed out that, it is not clear as to whether the Ward Tribunal was properly constituted as required by the law due to the fact that, members who heard the application during the visit to the locus in quo were not stated in the proceedings. The learned counsel conceded that, the land complaint and evidence adduced before the trial tribunal did not disclose the value of the land in dispute. In that regard, he was of the view that, the pecuniary jurisdiction of the trial tribunal was not ascertained.

On his part, Mr. Gervas submitted that, the issue of time limitation was raised suo motu by the appellate tribunal because it can be raised at any stage. However, he did not address the Court on whether the parties were asked to address on that issue. The learned counsel replied further that, the opinion of assessors of the appellate tribunal was given in the presence of the parties as required by the law. He was in agreement with Mr. Philipo that, the visit to the

locus in quo was not conducted by the appellate tribunal in accordance with the law. The learned counsel was also in agreement with Mr. Philipo that, the records do not show members of the trial tribunal who heard the application at the visit to the locus in quo and that, the value of the disputed land was not stated for purposes of ascertaining whether the trial tribunal had pecuniary jurisdiction.

Therefore, both learned counsel urged the Court to nullify the proceedings of the trial tribunal and appellate tribunal.

I have gone through the submissions advanced by the learned counsel for the parties and the evidence on record. I am of the view that, issues related to irregularities in the proceedings of trial tribunal are sufficient to dispose of this matter.

Starting with composition of the trial tribunal, the provision of section 11 of the LDCA and section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002 provide that a ward tribunal is properly constituted by not less than four members and not more than eight members and that, women should be not less than three. The issue of composition is fundamental. It has to be complied with at every sitting of the tribunal and reflected in the corum.

In the case at hand, the proceedings suggest that the land complaint lodged before the trial tribunal was heard on 24/12/2018. The members present on that day were Tausi Selemani, Mikidadi Mahembwa, Nelia Musibha and Gervasi Maganga. Therefore, the tribunal was properly constituted on 24/12/2018. However, the judgment of the trial tribunal suggests that a visit to the locus in quo was conducted. The extract part of the said judgment read as follows:

*Baraza limefika kwenye eneo la mgogoro ili kuona hali ya mgogoro ilivyo na kuchukua vipimo vya kibanda chake kama ifuatavyo: (i) urefu wa mita 4.7 upana mita 2.5.*

However, the proceedings do not show whether the trial tribunal visited the locus in quo. Thus, the date and members who visited the locus in quo are not known. Also, it is not clear as to whether both parties were present at the locus in quo. In my opinion, a visit to the locus in quo is part of the proceedings of the trial tribunal. Therefore, the proceedings should disclose members of the tribunal and parties present at the time of visiting the locus in quo. This stance was taken in **Nizar M.H. v. Gulamali Fazal Janmohamed** [1980] TLR 29. Furthermore, the proceedings have to disclose what transpired at the visit to the locus in quo. This include, who participated in the visit to locus in quo and whether witnesses were called or re-called to testify, and/or cross examined at locus in quo after reconvening in the tribunal's premises. This was not complied with in the present case. This procedural irregularity on the face of record vitiated the trial and caused a miscarriage of justice to the parties.

I now move to consider the pecuniary jurisdiction of the trial tribunal. Pursuant to section 15 of the LDCA, the pecuniary jurisdiction of the trial tribunal is limited to land whose value does not exceed three million shillings. It is settled law that, the issue of jurisdiction can be raised at any stage. See **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported). It is the pleading (complaint) or the evidence which establish whether the court or tribunal is seized with the jurisdiction to try the matter.

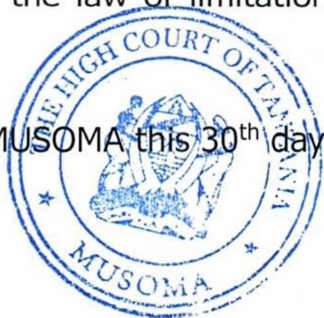
In the present case, the complaint lodged by the appellant did not disclose the value of the land in dispute. Also, the appellant did not state the said value in his evidence. Therefore, it is not clear as to whether the trial tribunal had


jurisdiction to try the matter. In view of what was held by this Court in **Mwenyekiti Serikali ya Kijiji Magenya vs Elias Magere**, Misc. Land Appeal, No. 111 of 2014, HCT at Mwanza (unreported), uncertainty as to jurisdiction including pecuniary jurisdiction renders the proceedings a nullity.

It follows that, since the proceedings of the Nyakato Ward Tribunal were vitiated due to the above pointed irregularities, the appeals filed in the appellate Tribunal and this Court cannot be allowed to stand. Therefore, I find it is not necessary to discuss the remaining irregularities found in the first appellate tribunal and other grounds of appeal

In the event, I invoke the revisional powers vested in this Court by section 43(1)(b) and (2) of the LDCA and hereby nullify the proceedings and quash the judgments and orders of the Nyakato Ward Tribunal in Land Application No. 60 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Appeal No. 48 of 2019. Any party who is still interested to pursue the matter is at liberty to institute a fresh case before the tribunal with competent jurisdiction, subject to the law of limitation. Each party shall bear its own costs. It is so ordered.


Dated at MUSOMA this 30<sup>th</sup> day of October, 2020.



  
E. S. Kisanya  
JUDGE

Court: Judgment is delivered in Chamber this 30<sup>th</sup> day of October, 2020 in the presence of Mr. Edson Philipo, learned advocate for the appellant and Mr. Gervas Emanuel, learned advocate for the respondent. B/C Charles Mugeta-SRMA present.



  
E. S. Kisanya  
JUDGE  
30/10/2020