

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

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 66 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara at Musoma in Land Appeal No. 39 of 2019 which originated from the decision of the Nyakato Ward Tribunal in Application No. 61 of 2018)*

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

**VERSUS**

**PETER NYAMHANGA ..... RESPONDENT**

**JUDGMENT**

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

**KISANYA, J.:**

The respondent, Peter Nyamhanga, was sued for trespassing to the appellant's land. The suit (land complaint) was lodged in the Nyakato Tribunal (hereinafter referred to as "the trial tribunal). Upon hearing both parties, the trial tribunal decided the matter in favour of the appellant. He was then declared lawful owner of the disputed land. Feeling that justice was not done, the respondent appealed to the District Land Housing Tribunal for Mara at Musoma (appellate tribunal). The respondent won the appeal. He was declared lawful owner of the land in dispute. The decision of the appellate tribunal was based on the point of law that, the suit lodged before the trial tribunal was time barred.

Aggrieved, the appellant filed the present appeal on the grounds that: One, the trial tribunal erred in law and fact for deciding that the case filed by the appellant is time barred. Two, the tribunal erred in law and fact for failure to consider that, the respondent refused to adduce evidence before the Ward Tribunal.

Three, the trial court erred in law and fact for failure to consider the appellant's evidence. Four, the tribunal erred in law and fact for failure to consider that there is no respondent's land in the land in dispute.

When the matter was placed before me for hearing on 4<sup>th</sup> August, 2020, the appellant was represented by Mr. Edson Philipo, learned advocate while Mr. Gervas Emanuel, learned advocate appeared for respondent. The Court asked the parties to address on whether the opinion of assessor who sat with the Chairman of the appellate tribunal was read in the presence of the parties. Upon hearing the parties, I found it pertinent to recall them to address me on following irregularities which were discovered in the course of composing the judgment:

1. Whether the Ward Tribunal has jurisdiction to entertain the matter. This was after noting that the value of the land in dispute was not stated in the complaint and evidence adduced before the trial tribunal and that, this issue was raised before the trial tribunal and first appellate Tribunal but not decided.
2. Whether the Ward Tribunal was properly constituted due to the fact that, the proceedings do not show members of the Ward Tribunal who were present at the visit to a locus in quo.

Mr. Phillipso submitted in respect of the first ground of appeal and the above issues raised by the Court. Thus, he did not address other grounds of appeal. In relation to the first ground, the learned counsel argued that, the appellate tribunal erred in holding that the matter was time barred without hearing the parties on the same issue. He argued that, in view of the evidence adduced by the appellant before the trial tribunal, the matter was not time barred.

As regards the opinion of assessors, Mr. Philipo submitted that, the opinion of assessors was not read or given in the presence of the parties as required by the law.

The learned counsel went on to address the court on the composition of the trial tribunal. He contended that, the proceedings do show the members who were present at the time of visiting the locus in quo. He was of the view that, the provision of section 11 of the Land Disputes Courts Act, Cap. 216, R.E. 2002 (the LDCA) was not complied with.

Mr. Philipo went on to argue that, it was not ascertained as to whether the trial tribunal had jurisdiction to try the matter in terms of section 15 of the LDCA. His argument was based on the fact that the value of the land in dispute was not stated.

In reply, Mr. Gervas contended that, the issue of time limitation was properly decided by the appellate Tribunal after considering the evidence adduced by the appellant who instituted the suit. He also responded that, the opinion of assessors of the appellate tribunal was read in the presence of the parties.

On the other two issues, Mr. Gervas was in agreement with Mr. Philip that, the proceedings of the Ward Tribunal do not show members who heard the application at the visit to the locus in quo and that, the value of the disputed land was not proved for purposes of ascertaining the jurisdiction of the tribunal.

In the light of the above, both learned counsel urged the Court to nullify the proceedings of the lower tribunals.

After considering the submission made by the learned counsel for the parties, I am of the opinion that, this appeal can be disposed of by addressing matters related to irregularities in the proceedings of trial tribunal.

The first issue is whether the trial tribunal was properly constituted in determining the matter before it. This issue is premised on the provision of section 11 of the LDCA and section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002 which provide for composition of the ward tribunal. In terms of the said provisions, a ward tribunal is properly constituted by not less than four members and not more than eight members out of whom not less than three members are supposed to be women. Such composition is vital and required to be observed whenever the ward tribunal sit to determine the matter. In that regard, the names of members present are required to be reflected in the corum of each sitting of the tribunal. It is not sufficient to name members in the judgment if the suit is not heard and disposed of on the same day.

It is on record that, the application which gave rise to this appeal was heard by the trial tribunal on 11/01/2019 and 18/01/2019. Although, the corum is not shown, it is depicted from the proceedings that, the witnesses were asked questions by four members of the trial tribunal namely, Gerevasi Maganga, Nelia Musibha, Mikidadi Mahembwa and Tausi Selemani. However, the judgment suggests that, the trial tribunal visited the locus in quo. But that fact is not reflected in the proceedings. In that regard, it is not certain as to who took part in the visit to the locus in quo, whether the tribunal was properly constituted at the said visit, whether witnesses were called or re-called to testify, and/or cross examine and whether the trial tribunal called the parties to comment on its findings. Such procedure was well stated in **Nizar M.H. v. Gulamali Fazal Janmohamed** [1980] TLR 29, where the Court of Appeal held:

*" When a visit to a locus in quo is necessary or appropriate, and as we have said, this should only be necessary in exceptional cases, **the court should attend with the parties** and their advocates, if any, and with much each witnesses as may have to*

*testify in that particular matter... When the court re-assembles in the court room, all such notes should be read out to the parties and their advocates, and comments, amendments, or objections called for and if necessary incorporated. Witnesses then have to give evidence of all those facts, if they are relevant, and the court only refers to the notes in order to understand, or relate to the evidence in court given by witnesses. We trust that this procedure will be adopted...*"[Emphasis added].

Applying the above settled law in the present case, there was procedural irregularity on the face of record as the members and parties who participated in the visit to the locus in quo are not known. Further, what transpired at the said visit and the findings thereto are not known. Such irregularities vitiated the trial and occasioned a miscarriage of justice to the parties. This is so when it is considered the findings of the visit to the locus in quo was taken into account in the decision of the trial tribunal.

The second issue is whether the trial tribunal had pecuniary jurisdiction to determine the matter. In terms of section 15 of the LDCA, the jurisdiction of the Ward Tribunal is limited to the disputed land or property valued at three million shillings. It follows that, the land complaint lodged before the Ward Tribunal or the evidence adduced thereto have to indicate that, the value of the land in dispute for purposes of determining the pecuniary jurisdiction. The law is settled that, the issue of jurisdiction can be raised even at appellate or revision stage. See the **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported).

In the matter at hand, neither the complaint nor the evidence adduced before the trial tribunal disclose the value of the land in dispute. In absence of the facts

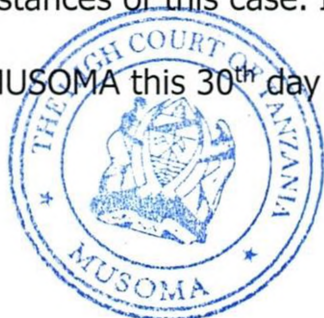


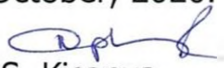
and evidence as to the value of the land in dispute, it is not clear as to whether the trial tribunal had jurisdiction to try the matter. In the case of **Mwenyekiti Serikali ya Kijiji Magenya vs Elias Magere**, Misc. Land Appeal, No. 111 of 2014, HCT at Mwanza (unreported) this Court made it clear that, uncertainty as to jurisdiction including pecuniary jurisdiction renders the proceedings a nullity. I associate myself to that decision. The proceedings of the trial tribunal were vitiated because the pecuniary jurisdiction was not ascertained.

Since the proceedings of the Nyakato Ward Tribunal were vitiated by the above stated irregularities, the appeal lodged in the appellate tribunal and this appeal were also vitiated. Therefore, I find it not necessary to discuss the irregularities found in the appellate tribunal and other grounds of appeal.

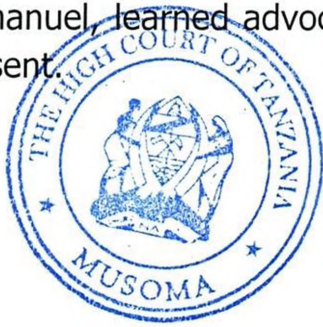
In the event, I invoke the revisional powers vested in this Court by section 43(1) (b) and (2) of the LDCA and hereby nullify the proceedings and quash and set aside the judgments and orders of the Nyakato Ward Tribunal in Application No. 61 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 39 of 2019. If parties are still interested to pursue the matter are at liberty to institute a fresh suit before the tribunal with a competent jurisdiction, subject to the law of limitation. I make no order as to costs due to the circumstances of this case. It is so ordered.


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



  
E. S. Kisanya  
JUDGE  
30/10/2020

Court: Judgment 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