

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

**AT MUSOMA**

**MISCL. LAND APPEAL NO. 67 OF 2020**

*(Arising from the decision of the District Land and Housing Tribunal of Mara  
at Musoma in Appeal No. 52 of 2019 which originated from the decision  
of the Nyakato Ward Tribunal in Application No. 64 of 2018)*

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

**VERSUS**

**MODESTA MARWA ..... RESPONDENT**

**JUDGMENT**

*22<sup>nd</sup> and 22<sup>nd</sup> October, 2020*

**Kisanya, J.:**

The appellant in this appeal sued the respondent for trespassing to his land and erect a commercial building thereon. The respondent raised a preliminary objection on point of law that, the Nyakato Ward Tribunal (the trial tribunal) had no pecuniary jurisdiction to entertain the matter filed before it. However, the trial tribunal proceeded to determine the matter in favour of the appellant. Aggrieved, the respondent appealed to the District Land and Housing Tribunal for Mara at Musoma (the first appellate tribunal) which reversed the decision of the trial Tribunal by declaring Modesta Marwa as lawful owner of the disputed land. Its decision was based point of law that, the suit filed before the trial tribunal was time barred.

Feeling that justice was not done, the appellant has preferred this appeal on the following grounds:

- 1. That the 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 refused to give evidence and claiming that the land in dispute has value of more than three millions.*
- 3. That the trial court (sic) 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 (sic).*

At the hearing of this appeal, the appellant and respondent were represented by Mr. Edson Philipo and Mr. Gervas Emanuel, learned advocates respectively. In addition to the above grounds, I asked the learned counsel for both parties to address me on whether the trial tribunal was properly constituted and whether the issue of pecuniary jurisdiction was properly ascertained by the trial tribunal. These issues were raised after noting that, the proceedings of the trial tribunal do not show the members who heard the application lodged before it and that, the issue of pecuniary jurisdiction of the trial tribunal advanced by the respondent was not determined.

When Mr. Philipo was called on to submit in support of the appeal, he decided to drop the grounds stated in the petition of appeal and address

on the issues raised by the Court suo motu. Tackling the issue whether the Ward Tribunal was properly constituted, the learned counsel for both parties were of the same view that, the coram of members who heard the application is not reflected in the proceedings. In that regard, both counsel argued that, the omission contravened the provision of section 11 of the Land Disputes Courts Act, Cap. 216, R.E. 2002 (the LDCA).

Both counsel submitted further that, the issue of pecuniary jurisdiction raised by respondent was not determined by the Ward Tribunal and hence, it was not clear as to whether the trial tribunal determined the matter which had value of three million as provided for under section 15 of the LDCA. Mr. Gervas argued further that, the issue of pecuniary jurisdiction was raised in the first appellate tribunal but not addressed.

Mr. Philipo pointed out another irregularity in the proceedings of the first appellate tribunal. He contended that, the opinion of assessors was not read in the presence of the parties thereby contravening section 23(1) and (2) of the LDCA and regulation 19(1) and (2) of the Land Disputes (District Land and Housing Tribunal) Regulations, 2003. In reply to this issue, Mr. Gervas contended that, the opinion and judgment was read on same date. He was of the view that, the same was not read as required by the law.

That said, both learned counsel urged the Court to nullify the proceedings and quash the judgement and order made thereto.

Having heard the submission by the learned counsel for both parties and upon examining the records, I am now in a position of considering the above stated issues.

The first issue relates to composition of the Ward Tribunal in the course of hearing and determining the land complaint before it. Composition of the tribunal is not a procedural issue. It is an important aspect in adjudication of land complaints before the ward tribunals. Pursuant to section 11 of the LDCA and section 4 of the Ward Tribunal Act, Cap. 206. R.E. 2002, a ward tribunal is constituted by not less than four nor are more than eight members whereby three must be women. Such composition has to be observed at every sitting of the ward tribunal. Therefore, members present at every sitting of the ward tribunal have to be reflected in the proceedings. It the proceedings which will enable us to determine whether the ward tribunal was properly constituted. The fact that members are reflected in the judgment is not a determining and conclusive evidence as to members who heard the matter. This is so when the date of hearing and date of judgment are different.

The records in the appeal at hand show that, the appellant adduced his evidence on 18/01/2019. The respondent did not cross-examine him. She raised a preliminary objection on point of law that, the tribunal had no pecuniary jurisdiction to entertain the matter. However, the member present when the application was placed before the tribunal for hearing on 18/01/2019 are not mirrored in the proceedings. Their names were stated in the judgment delivered on 5/02/2019. In this regard, it is not clear as to whether the Ward Tribunal was properly constituted on 18/01/2019. Nothing suggesting that, member who heard the parties on 18/01/2019 are those named in the judgment. I am persuaded by the decision of this Court in Mariam **Madali vs Hadija Kihemba**, Misc. Land

Appeal No. 16 of 2019, HCT Land Division at DSM when her Ladyship Mango, J stated:

*"In my view, composition of the tribunal is not a mere procedural issue, it is in fact a determining factor as whether, the institution that adjudicated the matter was really a Ward tribunal within the meaning of section 11 of Cap. 216 or something else. Tribunal must ensure that they are properly constituted when adjudicating cases because failure to that reduces their status as ward tribunals legally unknown institution."*

In the circumstances, I find that the composition of the trial tribunal is at issue for want of members who heard the parties on 18/01/2019. This vitiated the trial tribunal's proceedings.

I now move to consider the second issue on pecuniary jurisdiction of the Ward Tribunal. I have indicated herein that, the respondent raised a preliminary objection that, the tribunal had no pecuniary jurisdiction to entertain 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. The law is settled that, the issue of jurisdiction can be raised at any stage of the case even at appellate or revisional level. See the **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported) where the Court of Appeal held:

*"At this point we would hasten to acknowledge 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. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision. We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction."*

Once the issue of jurisdiction is raised, the court or tribunal is required to make a ruling on it after hearing both parties. The Ward Tribunal proceeded to pronounce judgment against the respondent. She was not called upon to substantiate his claim on the pecuniary jurisdiction. Considering that the issue of jurisdiction is so vital, the Ward Tribunal was duty bound to satisfy itself on whether it had power to determine the matter. This is so when it is considered that, the value of the land in dispute was not stated in the complaint lodged before it and evidence adduced by the appellant. Therefore, I am of the considered opinion that, the pecuniary jurisdiction of the trial tribunal was not properly determined. There is a possibility that, the trial tribunal entertained a matter which is outside its jurisdiction.

For the foresaid reasons that, the proceedings in the Nyakato Ward Tribunal were vitiated thereby vitiating the judgment and orders made thereto together with appeals filed in the first appellate Tribunal and this Court. Hence, I find it not necessary to address other grounds of appeal and issue of opinion of assessor raised by the Mr. Philipo.

In the event, I am forced to invoke the revisional powers of this Court under section 43(1)(b) and (2) of the LDCA as hereby do nullify the entire proceedings and quash the judgments of both lower tribunals and orders

made by the Nyakato Ward Tribunal in Land Application No. 64 of 2018 and the District Land and Housing Tribunal for Mara at Musoma in Appeal No. 52 of 2019. Any party who is still interested to pursue the matter is at liberty to institute a fresh case before a tribunal with competent jurisdiction, subject to the law of limitation. Each party to bear its own costs. It is so ordered.

Dated at MUSOMA this 22<sup>nd</sup> day of October, 2020.



A handwritten signature in blue ink, appearing to read "E. S. Kisanya".

E. S. Kisanya  
JUDGE  
22/10/2020