

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

AT MOSHI

LAND APPEAL NO. 11 OF 2020

(C/F Land Appeal No. 17 of 2020 Moshi District Land and Housing Tribunal
Originating from Masama South Ward Tribunal in Land Case No. 45 of 2018)

SIANA JOHN ANGASIRINI..... APPELLANT

VERSUS

GODBLESS ELIUSHU KIMARO..... RESPONDENT

11th November 2020 & 11th December, 2020.

JUDGMENT

MKAPA, J:

The appellant aggrieved by the Moshi District Land and Housing Tribunal (the tribunal) decision in **Land Appeal No. 17 of 2020** delivered on 25th June 2020 appealed to this court raising six grounds of appeal.

In a nutshell the facts of the matter which originated from Masama South ward tribunal (ward tribunal) in **Land Application No. 45 of 2018** is that the respondent herein was the plaintiff claiming back a piece of land (suit land) measuring four (4) acres located at Masama South within Hai District in Kilimanjaro region. It is alleged



that the appellant trespassed into the respondent's suit land and cut down five trees. When asked to give vacant possession she declined and the respondent instituted before the ward tribunal **Land Case No. 45/2018** claiming ownership of the suit land which he alleged to have inherited from his late father Rev. Eliushu Kimaro who had also inherited the same from his father Rev. Kornelio Kimaro the original owner. The Ward tribunal's decision was in favour of the respondent. Aggrieved, the appellant filed **Appeal No. 17/2020** at the tribunal opposing the ward tribunal's proceedings and decision and he lost. Still aggrieved the appellant has appeal to this court advancing six grounds;-

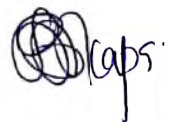
1. That, the first appellate tribunal erred in law and fact in upholding the decision of the trial tribunal, without analyzing the evidence adduced during the trial.
2. That, the first appellate tribunal erred in law and in fact in ignoring the issue of pecuniary jurisdiction of the trial tribunal.
3. That, the appellate tribunal erred both in law and in fact in upholding the decision of the trial tribunal which decided on the suit land without ascertaining its value.
4. That, the first appellate tribunal erred both in law and in fact in allowing the respondent herein to adduce new evidence that was never adduced at the trial tribunal.

5. That, the tribunal chairman grossly erred both in law and in fact in failing to weigh and consider the evidence adduced by the appellant thus arriving at erroneous decision.

6. That, the first appellate tribunal chairman grossly erred both in law and in fact in failing to assign reasons as to why he departed from the opinion of the two wise assessors.

While hearing the appeal on 06th October 2020, it was agreed that the appeal be heard by way of written submission. The appellant was represented by Mr. Oscar Mallya learned advocate while the respondent was represented by Mr. Martin Kilasara also learned advocate.

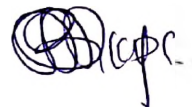
Submitting jointly in support of the 1st 3rd and 5th grounds of appeal Mr. Mallya submitted that it is the duty of the trial court or tribunal to evaluate the evidence of both parties. It was Mr. Mallya's argument that the chairman of the tribunal failed to evaluate the entire evidence while composing the judgment as a result he arrived at an erroneous decision. To support his argument he cited the decision in the case of **D.B Shapriya and Co. Ltd Vs Mek One General Trader and Another Civil Appeal No. 197 of 2016 Court of Appeal of Tanzania at Dar Es Salaam** (Unreported) where the court held *inter alia*;

 caps.

"For any judgment of the Court of Justice to be held a reasoned one, in our respectful opinion, it ought to contain an objective evaluation of the entire evidence before it. This involves a proper consideration of the evidence for the defence which is balanced against that of the prosecution in order to find out which case among the two is more cogent,"

Mr. Mallya contended further that, the only person who had to prove the facts alleged before the ward tribunal is the respondent (the applicant therein) and not the appellant herein and that the applicant had failed to prove the same.

As regards to the 2nd ground Mr. Mallya submitted that the appellate tribunal's chairperson ignored the ground raised by the appellant regarding the pecuniary jurisdiction of the tribunal. It was Mr Mallya's argument that both the trial tribunal and the appellate tribunal never established value of the suit land for the purposes of establishing the pecuniary jurisdiction of the both tribunals. He cited the case of **Ibrahimu Twahili Kusundwa And Another Vs. Crdb Bank Limited And 3 Others, Land Case No. 274 Of 2017 High Court Of Tanzania Dar-Es- Salaam** (Unreported) in support of his contention where the Court at page 7 of the typed judgement had the following to say;



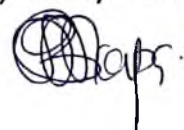
"In order to determine the pecuniary jurisdiction of the court we look at the nature of the claim, cause of action and the subject matter"

On the 4th ground Mr. Mallya submitted that it is trite law the fact that the appellate tribunal has to deal only with evidence adduced at the trial tribunal and not new evidence which was not before the tribunal as evidenced at paragraph 2 of page 3 when the Respondent asserted that;-

*"As for the suit land it is estimated at 4 acres. The land of **"almost"** one acre has no dispute. The disputed land is almost three acres"*
[Emphasis is ours]

It was Mr. Mallya's argument that the above evidence was new as the same was not adduced at the trial tribunal. As regards to the 6th ground Mr. Mallya challenged the trial tribunal for not assigning reason(s) for departing from the opinion of the two assessors. In support of his argument he cited the provisions of section 24 of the **Courts (Land Disputes Settlement) Act [Cap 2 R.E 2019]** which provides that;

"in reaching decisions the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that



Chairman shall in the judgment give reasons for differing with such opinion"

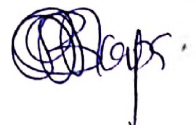
The appellant finally prayed for this Court to allow the appeal and quash and set aside the tribunal's decision.

Responding jointly against the 1st, 3rd and 5th grounds, it was Mr. Kilasara's contention that the trial tribunal did evaluate all evidence on record relating to both parties' rights and interest over the suit land.

With regard to the 2nd ground Mr. Kilasara stated that it is undisputed that as per section 15 of the **Land Dispute Courts Act 2002**, the pecuniary jurisdiction of the ward tribunal involving land disputes is limited to three million shillings. He further conceded the fact that there was no proof on record whether evaluation was conducted in ascertaining the value of the suit land.

As regards to the 4th ground Mr Kilasara briefly reacted to the effect that no new facts or evidence were adduced at the first appellate tribunal but only oral submission on the grounds of appeal raised.

Turning to the 6th ground Mr. Kilasara relied on pages 2 and 3 of the first appellate tribunal's judgement and asserted that the



chairperson did re- evaluate the evidence on record and made his findings on why he departed from the assessor's opinion.

Mr. Kilasara finally prayed for the appeal to be dismissed with costs.

In the rejoinder by the Appellant, the counsel for the appellant reiterated his submission in chief and maintained that the appeal be allowed.

Having considered both arguments for and against the appeal I think the question for consideration is whether the tribunal correctly evaluated the evidence on record in determining the appeal before arriving at its decision.

It is well settled that the initial question the trial court ought to consider prior to embarking on a full trial is the fact that whether or not the court is vested with jurisdiction.

On the above legal position, I will begin with the second ground of appeal as to whether the ward tribunal had jurisdiction to determine the suit land since its findings can dispose of the matter. I find it opportune to refer to the handwritten ward tribunal proceedings at pages 3 and 5. The relevant excerpt reads as follows;-

"baada ya Sm -1 kusomewa hayo kuwa shauri hili liende Moshi mwenyewe ameomba kuwa hataki kufanya tathmini bali liendelee

bila tathmini, Baraza limeafiki na kueleza kuwa kama ameomba hivyo basi shauri lisikilizwe kwenye baraza hili"

A reading from the above excerpt makes it clear the fact that the ward tribunal assumed jurisdiction of the matter without ascertaining the value of the suit land in order to satisfy itself whether it had pecuniary jurisdiction to entertain the matter or not.

In the case of **Shyam Thanki and Others V. New Palace Hotel (1971) E.A 199** at 202 the Court had this to say;

*"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 does not possess"** [emphasis mine]*

Admittedly, the issue of jurisdiction is fundamental to a court or tribunal conferring itself with jurisdiction before it proceeds to entertain the matter before it. Once ignored or omitted then it can be raised at any stage of the hearing even if not raised or considered at the trial level. It is on record the appellant prompted the issue of jurisdiction both at the ward and district tribunal yet the tribunal chairperson ignored to re-evaluate the proceedings of the ward tribunal.



For the reasons discussed above, I have no hesitation to come to a conclusion that the present appeal has merit and the second ground of appeal alone suffices to dispose of the appeal. More so, it is not necessary to dwell on discussing the remaining grounds. Consequently, I allow the appeal by quashing the judgment and decree of the District tribunal. Parties are at liberty to pursue the matter to the appropriate authority after ascertaining the value of the suit land.

It is so ordered.

Dated and delivered at Moshi this 11th day of December 2020.



S.B.MKAPA

JUDGE

11/12/2020