

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

LAND APPEAL NO.76 OF 2019

*(Arising from District Land and Housing Tribunal of Mwanza at Mwanza in
Land Application No. 493 of 2017)*

**THE REGISTERED TRUSTEES OF THE KHOJA
SHIA ITHNA ASHERI (MWANZA) JAMAAT APPELLANT**

VERSUS

MRS FAKHARIA A. SHAMJI RESPONDENT

JUDGMENT

Date of ;ast Order: 25.11.2020

Date of Judgment: 14.12.2020

A.Z.MGEYEKWA, J

The appellant, the Registered Trustees of the Khoja Shia Ithna Asheri (Mwanza) Jamaat is appealing against the decision of the District Land and Housing tribunal of Mwanza in Land Application No. 493 of 2017 which was dismissed with costs. The appellant did not see justice hence

this appeal to this court. The grounds upon which this appeal is based are these;-

- 1. That, the honourable Chairman of the tribunal erred on point of fact and law by delivering the judgment in favour of the respondent by ordering the appellant to renovate the disputed house.*
- 2. That, the honourable Chairman of the tribunal erred on point of fact and law by delivering the judgment in favour of the respondent without addressing himself regarding the rent arrears.*
- 3. That, the honourable Chairman of the tribunal erred on point of fact and law by delivering the judgment in favour of the respondent by presenting that the appellant herein breached the contract by failing to honour the high court decision while the respondent was the one who breached the same for non-payment of rent.*
- 4. That, the honourable Chairman of the tribunal erred on point of fact and law by delivering the judgment while not considering the full opinion of assessors.*
- 5. That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent basing on the testimony of respondent without considering that the respondent was earlier evicted from the same reason of non-payment of rent.*

6. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent by giving the order that the respondent should stay in the disputed premises basing to conditions of the contract stipulates while the same was never produced as an exhibit during the hearing.*
7. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent referring the pictures (exhibit DE4) while the same was not verified.*
8. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent by considering the testimony of DW2 that the disputed house was handled over to the respondent after the lapse 307 days.*
9. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent by considering the testimony of DW1 and his report (exhibit DE1) which was made without the knowledge of the appellant were so much in value contrary to the rent arrears.*
10. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent by without acknowledging that the tribunal visited the locus in quo.*

11. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent without giving his opinion on what witnessed during the visiting of the disputed premises.*
12. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent for not considering the testimony of PW1 that the respondent's husband was given another house to stay by the applicant.*
13. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent that only the keys of the house in dispute was handed over to the respondent but not the house.*
14. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent basing on the evidence that the house in dispute was rented to Naushand Rajabal after the High court decision.*
15. *That, the honourable Chairman of the tribunal erred on point of fact and law by giving his judgment in favour of the respondent by submitting that the house in dispute was not fit for human habitation while the same was once resides by one Naushand Rajabal.*
16. *That, the honourable Chairman of the tribunal erred on point of fact and law by dismissing the application with costs whiles the appellant brought the application regarding the payment of the rent arrears.*

In prosecuting this appeal, Mr. Alex Lwoga, learned counsel, and Mr. Innocent Naya, learned counsel respectively, appeared for the appellant and respondent. Both parties had earlier on filed their respective written submissions and reply written submissions for and against the appeal which they sought to adopt as part of their oral submissions.

Before I proceed to record the submissions made by both learned counsels, I find it prudent to acknowledge and extend my appreciation to the learned counsels for their useful and length submissions on the grounds for review. However, this court will concentrate on the legal issue raised by the learned counsel for the appellant when he was rejoining that the trial tribunal had no jurisdiction to entertain the matter the way it did. Being the new issue raised, as a matter of procedure, I gave the parties' audience to address the court on whether the trial tribunal had jurisdiction to determine the matter.

Submitting for the raised issue of jurisdiction, Mr. Adam stated that the issue of jurisdiction can be raised at anytime. To buttress his position he cited the case of **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70. He added that the issue of jurisdiction goes to the root of the case. Mr. Adam stated that

the applicant filed an application at the District Land and Housing Tribunal praying for the court to declare that the respondent has breached the lease agreement for failure to pay the outstanding balance of Tshs. 1,000,000/=. He went on to state that the pecuniary jurisdiction in regard to a claim of Tshs. 1,000,000/= as per section 15 of the Land Disputes Courts Act, Cap. 216 provides that all matters in relation to landed properties are determined at the Ward Tribunal and the limit is Tshs. 3,000,000/=. He argued that for that reason the matter was supposed to be lodged at the Ward Tribunal instead of the District Land and Housing Tribunal. Mr. Adam continued to submit that even though the parties have not raised the issue of jurisdiction but this court can raise this issue.

On the strength of the above, Mr. Adam beckoned this court to quash and set aside the Ward Tribunal judgment and order parties to institute the matter in the tribunal which is vested with jurisdiction.

In reply, Mr. Slyranus argued that the issue of jurisdiction is brought up inappropriately. He urged this court to revisit the court records. He stated that the appellant is the one who lodged the matter before the Ward Tribunal and he is the one who filed the present appeal. He lamented that the appellant is playing hide and seek game since he had an opportunity to raise the issue of jurisdiction as early as possible. He

strenuously argued that the learned counsel was the one who represented the appellant at the District Land and Housing Tribunal thus he was in a position to know that the Ward Tribunal had no jurisdiction to determine the matter from the beginning. He went on to state that in case this court will find that the Ward Tribunal had no jurisdiction to determine the matter then he urged this court to allow the ground with costs which will include the District Land and Housing Tribunal Costs.

On the strength of the above argumentation, he beckoned this court to dismiss the appeal with costs.

Having summarized the facts of the case and submissions of the appellant's and the respondent's counsels, I now turn to confront the issue raised by the learned counsel for the appellant that the Ward Tribunal had no jurisdiction to determine the matter.

It is now settled law that the issue of jurisdiction can be raised at any stage even on appeal. This is a grey area with a plethora of authorities that courts are conferred jurisdiction by the statute. The same was held in the case of **M/S Tanzania China Friendship Textile Co. Ltd (supra)**. The learned counsel was right to enlighten this court over the matter for it is unsafe for the court to proceed to determine the matter which has no jurisdiction as it will end up in futility. This was stated in

the case of **Fanuel Mantiri Ng'unda v. Herman M Ngunda**, Civil Appeal No. 8 of 1995, CAT (unreported) that:-

"The jurisdiction of any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature....the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case."

Auspiciously, jurisdiction or powers and procedures of the Ward Tribunals are provided for under section 8 of the Ward Tribunals Act, Cap. 206 R.E. 2002 and Section 10 (1) of the Land Disputes Courts Act, Cap. 216 R.E 2002. Moreover, Section 13 (2) of the Land Disputes Court Act Cap. 216 R.E. 2002 provides that; I quote:-

"(2) Without prejudice to the generality of subsection (1), the Tribunal shall have jurisdiction to enquire into and determine disputes arising under the Land Act 1999 and the Village Land Act 1999."

Applying the above provision of law, the subject matter in the instant appeal arises from the breach of the lease agreement which is covered under Part IX of the Land Act, Cap. 113 of 1999. It is, therefore, fit to be determined by the Ward Tribunal on its original jurisdiction.

Again, the Ward Tribunals have pecuniary jurisdiction to entertain disputes arising under the Land Act of 1999 in their capacity as tribunals as provided for under Section 15(1) of the Land Disputes Courts Acts Cap. 216 as I quote:-

*"Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at **three million shillings.**" [Emphasis is mine].*

In the application before the tribunal, the subject matter was a claim of rent arrears at a tune of Tshs. 1,000,000/=. Basing on the provision of the above quoted, the matter ought to be lodged to the Ward Tribunal as its jurisdiction is conferred by the statute. In the case of **Syam Thaki and Another v New Palace Hotel** [1971], 1 EA 202 the Court of Appeal of Tanzania stated that:-

"All courts in Tanzania are created by statutes and their jurisdiction is purely statutory."

Consequently, I find that it was the prudence of the legislature that the case be lodged in the lowest court as possible. It is my findings that failure to file the case as required by the law, the same had offended Section 13 of the Civil Procedure Code which requires every suit be

instituted in a court of lower grade as possible with jurisdiction and competence to try it.

From the above findings, it is crystal clear that the District Land Housing Tribunal was lacking the requisite jurisdiction to seize and try the matter. As it was held in **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No.56 of 2017 that:-

"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."

Applying the above authority, I proceed to find that the proceedings and judgment of the District Land and Housing Tribunal and orders innate out of it a nullity.

In the upshot, I quash and set aside the decisions of both tribunals and proceed to allow the appeal with costs to the appellant. The appellant is at liberty to institute a fresh case before the competent tribunal.

DATED at Mwanza this 30th December, 2020.



A.Z.MGEYEKWA

JUDGE

30.12.2020

Judgment delivered on the 30th December, 2020 in the presence of both parties.


A.Z.MGEYEKWA

JUDGE

30.12.2020