

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
AT TABORA**

**MISCELLANEOUS LAND CASE NO. 4 OF 2020**

*(From the decision of District Land and Housing Tribunal of Nzega District at Nzega in Land Case Appeal No. 63 of 2019 and Original Ward Tribunal of Nguvu Moja Ward in Application No. 1 of 2019)*

**LUTULAMBILI MAGEKE ----- APPELLANT**

**VERSUS**

**NGASA BUNDALA (As the administrator of the Estate of the deceased BUNDALA SHILINDE)**

**JUDGMENT**

*20/10/2020 & 19/02/2021*

**BAHATI, J.:**

This is the second appeal originating from the decisions of Nguvu Moja Ward Tribunal in Land Application No. 01 of 2019 and Land Case Appeal No. 01 of 2019 of Nzega District Land and Housing Tribunal whereby the respondent was declared a rightful owner of the disputed land by Nguvu Moja Ward Tribunal and later on the first appeal the District Land and Housing Tribunal passed an ex-parte decision where it upheld the decision of the Ward tribunal.

Still dissatisfied the appellant has brought this second appeal on the following grounds: -

1. *The appellate District Land and Housing Tribunal erred in law for not considering that the ward tribunal lacks jurisdiction to entertain the matter.*
2. *The appellate District Land and Housing Tribunal misdirected themselves in their decision for failure to observe that the respondent left the seller one Lutaja Bundala who was supposed to be joined in the suit.*
3. *Since the appellant stayed on the suit land for more than 12 years the Appellate District Land and Housing Tribunal erred in law for not considering that the respondent to claim (sic) the same was hopeless as being time-barred.*
4. *The appellate District Land and Housing Tribunal erred in law for failure to discover that the respondent could not disclose where and when he occupied the suit land.*

It is on the above grounds the appellant prayed this court to allow the appeal with costs.

When the appeal was called on for hearing Ms. Agnes Mabula held brief for the appellant's advocate Mr. Samwel Ndanga who was absent and she also appeared for the respondent. Ms. Agnes prayed this court to argue the appeal by way of a written submission in which the Court granted the prayer.

In his submission, Mr. Ndanga stated that the lower tribunal lacked jurisdiction to entertain the suit. That the record of the trial tribunal shows that the suit land comprised of 600 acres, the record of the trial tribunal did not indicate the monetary value of the land in

dispute. He assumed that, if one decides to dispose of the whole land at 200,000/- shillings per acre the value of the disputed land will be above three million TZS 3,000,000/= which is above the limit set for the ward tribunal.

Further to that, it was the duty of the trial tribunal to be certain of its jurisdiction before trying the matter at hand, it was also the duty of the District Land and Housing Tribunal as an appellate tribunal to inquire into the pecuniary jurisdiction of the ward tribunal. To support his argument, Mr. Ndanga cited the decision of **Steven Michael vs Abdallah Mabulah Land Appeal No. 13/2017 HC at Tabora** where Utamwa, J held that:-

*“An issue of jurisdiction is, in law, a very fundamental matter. A court must thus, determine whether or not it has jurisdiction to entertain a matter before it prior to the determination of any other issue. Such an issue of jurisdiction can be raised at any stage of the proceedings even at the Appellate stage by the parties or by the court suo moto.”*

It is Mr. Ndanga's argument that the trial tribunal tried the case with the uncertainty of its jurisdiction since the value of the subject matter was neither mentioned nor determined. Further, the issue of jurisdiction is a pure point of law that can be raised at any stage even on a second appeal.

As to the second ground, Mr. Ndanga argued that the seller was not joined in the suit to meet justice, the record shows that the

appellant had occupied the suit land since 1980 upon purchase from one Bundala Shilinde and Lutaja Bundala. It is a principle of law that, in a suit for the recovery of land sold to a third party, the buyer should be joined with the seller as a necessary party, non-joinder will be fatal to the proceedings.

Further to that, the Court can't make any order in this matter without affecting the rights of Lutaja Bundala and Bundala Shilinde. Mr. Ndanga argued that the file cover relied on by the DLHLT cannot assist the court to determine whether the seller was joined in the suit, it is only the judgment that determines the parties to a suit.

On the third ground of appeal, Mr. Ndanga submitted that the record of the Ward tribunal shows that the claim by the respondent was hopelessly time-barred since the appellant had been in occupation of the suit land for 39 years undisturbed until 2019 when the dispute raised.

It is Mr. Ndanga's argument that the respondent's father died in March 2019 but during his lifetime he never disturbed the appellant over the suit land and he is the one who sold the same to the appellant with his son Lutaja Bundala. Mr. Ndanga relied on the law of Limitation Cap 89 [R.E 2019] that the 12 years limit set by law had expired. He argued that the law of limitation is a merciless sword that cuts across and deeds into all those who get caught in its web.

On the fourth ground of appeal, Mr. Ndanga argued that the respondent failed to disclose when, where and how he came into possession of the suit land.

In response, Mr. M. K. Mtaki Advocate for the respondent submitted that this being a second appeal, the law requires the appellant to argue on point of law only not on points based on issues of fact on which the two tribunals below had reached concurrent findings. The learned advocate cited the case of **Amratlal Damodar Maltaser and another T/A Zanzibar Silk Stores v. A. H Jariwalla T.A Zanzibar Hotel [1980] TLR** where the Court held that,

*"Where there are concurrent findings of facts by two courts, this court should as a wise rule of practice follow the long-established rule repeatedly laid down by the Court of Appeal for East Africa, that an appellate Court in such circumstances should not disturb concurrent findings of facts unless it is clearly shown that there has been a misapprehension of the evidence, a miscarriage of justice or violation of the same principle of law or procedure."*

Basing on the above-cited principle of law, Mr. Mtaki invited this Court not to consider grounds number 2 and 4 of the petition of appeal because they purely point of facts.

However, Mr. Mtaki argued all grounds leveled by the appellant in the petition of appeal just in case this court denies his prayer. He submitted that there was no evidence to support the allegation by the appellant that the value of the suit land was more than three million TZS 3,000,000/=. The allegation was not raised before the trial Ward Tribunal and neither did he adduce or lead evidence to

support the allegation that the suit land comprised 600 acres as alleged by the appellant.

It is Mr. Mtaki's argument that the issue of the size of the suit land has come just as an afterthought and if one assumes that the suit land comprises 600 acres as alleged by the appellant, there is no tangible evidence that the suit land was ever measured, further, there is no evidence to show that the market value of the suit land is more than three million which is beyond the pecuniary jurisdiction of the Ward Tribunal as provided under section 15 of the Land Disputes Courts Act, 2002.

On the second ground, Mr. Mtaki submitted that it is not true as alleged by the appellant that the seller of the suit land was not joined to the application before the Ward Tribunal. On page 4 of the handwritten judgment of the Ward Tribunal, it is clear that the seller was the 2<sup>nd</sup> Respondent in the application.

As to the third ground, Mr. Mtaki submitted that the appellant failed to discharge the burden of proof set by the law of evidence since there was no evidence led by him to support the allegation that he had stayed on the suit land for more than 12 years. To support his argument, Mr. Mtaki cited section 110 (1) of the Evidence Act, Cap 6 [R.E 2019] which provides that:-

*“Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”*

- (g) That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
- (h) That the nature of the property was such that in the light of the foregoing/adverse possession would result.”*

It is through that argument, Mr. Mtaki claims that the appellant failed to prove his allegation regarding the principle of adverse possession.

Having carefully considered the competing arguments of the counsels for the parties, before analysing the grounds of appeal as leveled by the appellant; I have found it important to loosen the knot tied by the respondent's counsel on whether ground 2 and 4 may be argued on the second appeal.

I have thoroughly checked the record of the two tribunals below and I came to the knowledge that, the appellant lost the first appeal at the District Land and Housing Tribunal for Nzega whereby the tribunal on *ex parte* judgment upheld the decision of Nguvu Moja ward tribunal.

Being guided by the procedure of this court and with the guidance of case laws, it is a principle of law that the second appellate court cannot interfere with two concurrent decisions of the lower courts unless the two courts misapprehended the evidence or they breached some principles of law, I firmly agree with the respondent that, this being a second appeal and there are

concurrent decisions by the two lower tribunals I will revisit the lower tribunal proceedings with care to see whether the courts below misapprehended the evidence or breached principles of law. (see *Wankuru Mwita vs. Republic, Criminal Appeal No. 219 of 2012* and *Salum Mhando v. the Republic [1993] TLR 170*)

Coming to the first ground on whether the trial tribunal had jurisdiction to entertain this matter, the appellant's advocate has submitted to this court that, since the suit land comprises of 600 acres it falls beyond the pecuniary limit of the Ward tribunal but on the other hand the respondent's counsel argues that the suit land was never measured and there is no evidence that showed the market value of the suit land.

I have gone through the record of the case to find whether the trial tribunal was fully aware of the size of the suit land to be 600 acres but its value was never ascertained.

I believe that jurisdiction is a fundamental matter to be considered by a Judge or Magistrate before hearing any matter. Before assuming powers to entertain any matter, Magistrates are supposed to ensure that they have requisite jurisdiction to do so.

The law is settled to the effect that, the issue of jurisdiction is the basis of a particular court or tribunal conferring itself with jurisdiction before it proceeds to entertain the matter before it. Once ignored or omitted it can be raised at any stage of the hearing, even if not raised or considered at the trial level.



The above principle is observed in ***Shyam Thanki and Others vs New Palace Hotel [1971] 1 EA 199 at 202*** where the court held that;

*"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 it does not possess"*

Also the Court in the case of **Fanuel Mantiri Ng'unda v. Herman M Ngunda, Civil Appeal No. 8 of 1995, CAT (unreported)** further elaborated 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."*

I, therefore, agree with the appellant's learned advocate that the trial tribunal had no jurisdiction to hear this matter because from the very beginning it ignored the question of jurisdiction as stipulated under section 15 of the Land Disputes Courts Act, Cap. 216 which states, 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.”*

The jurisdiction conferred by the quoted section above is on the monetary value of the subject matter which is three million shillings TZS 3,000,000/= not the size; in the instant case, the ward tribunal assumed jurisdiction basing on the size of the suit land which is 600 acres as the record shows.

It is my considered opinion that, a court that hears and determines a case must have a jurisdiction base on which it caters upon, merits of the case cannot be found where the court has no jurisdiction. The ward tribunal had no pecuniary jurisdiction and the absence of such not only automatically affects merits but justice as well. The ward tribunal proceedings were null and void. I thus proceed to declare them null and void.

For the reasons discussed above, I will not dwell on other grounds of appeal since the first ground of appeal alone suffices to dispose of the appeal. The appeal is hereby allowed by quashing the judgment and decree of two tribunals below. If parties are still interested in pursuing this matter they may file a fresh suit after ascertaining the value of the suit land. No order as to costs.

Order accordingly.

**A.A.BAHATI**

*Bahati*

**JUDGE**

**19/02/2021**

Judgment delivered under my hand and seal of the court in the chamber, this 19<sup>th</sup> day February, 2021 in the presence of Mr. Samwel Ndanga for appellant and Joyce Nkwabi Respondent.

*Bahati*

**A. A. BAHATI**

**JUDGE**

**19/02/2021**

The right of appeal is explained.

*Bahati*

**A. A. BAHATI**

**JUDGE**

**19/02/2021**

