

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

MISC. LAND APPEAL NO. 96 OF 2020

(Arising from the ruling of the District Land and Housing Tribunal for Mara at Musoma in Land Appeal No. 315 of 2019 originating from Application No. 5 of 2019 of the Stendi Kuu Tribunal at Mugumu)

- 1. SAIMON MBOTA 1ST APPELLANT**
2. NYAGORYO MBOTA 2ND APPELLANT
3. NYAMEGAI MBOTA 3RD APPELLANT
4. KWAU MBOTA 4TH APPELLANT
5. SEDI MBOTA 5TH APPELLANT
6. BAITA MBOTA 6TH APPELLANT
7. MAITARYA MBOTA 7TH APPELLANT

VERSUS

WILIBARDI KALIMANZIRA BINYENZI RESPONDENT

JUDGMENT

25th and 25th March, 2021

KISANYA, J.:

Before the Stendi Kuu Ward Tribunal at Mugumu (the trial Tribunal), the appellants lodged a suit for termination of the sale agreement entered between Mkami Ephraim Mbota and the respondent, Wilibardi Kalimanzira Binyenzi. The said contract was in respect of a

piece of land Plot No. 126, Block B, Chamoto, that was sold to the respondent in consideration of six million shillings (Tshs. 6,000,000). In the course of determining the complaint lodged before it, the parties agreed to settle the matter. The appellants agreed to refund Tshs 4,000,000 which was advance payment paid by the respondent. They also agreed to pay him interest of two million and five hundred shillings (Tshs. 2, 500,000). It was agreed the whole amount of six million and five hundred (Tshs. 6, 500,000) would be paid before 3rd September, 2019.

The appellants defaulted to pay the agreed amount of Tshs 6, 500,000 on the agreed date. In the result, the trial Tribunal declared the respondent as lawful owner the disputed land on the condition that he would pay the remaining balance of Tshs. 2,000,000 to the said Mkami Ephraim Mbota.

Aggrieved, the appellants appealed to the District Land and Housing Tribunal for Mara at Musoma (the first appellate Tribunal). They alleged among others, that the trial Tribunal had no pecuniary jurisdiction to entertain the matter. The first appellate Tribunal

dismissed the appeal with costs. It held that, the appeal was improperly filed and that, it was wrong for the appellants to appeal against their own mutual agreement.

Still aggrieved, the appellants has knocked at the doors of this Court.

They have advanced the following four grounds of appeal:

1. ***That***, the first Appellate Tribunal erred in law for failure to consider that, the trial Tribunal entertaining (sic) the case without pecuniary jurisdiction.
2. ***That***, the first Appellate Tribunal erred in law for failure to consider the evidence adduced by the appellant (sic) which were in her (sic) favour.
3. ***That***, the first Appellate Tribunal wrongly dismissed the appeal without considering the principles which have to be taken into account.
4. ***That***, the first Appellate Tribunal erred in law for failure to consider that the Respondent failure to comply order of the Tribunal for filing written submission.

This appeal was heard in the presence of the second appellant and the respondent. Other appellants failed to appear without notice.

The 2nd appellant prayed to adopt the petition of appeal as part of his submission. He submitted that the trial tribunal had no jurisdiction to

try the matter before it. He contended that the said ground was raised in the first appellate tribunal but not considered. The 2nd appellant went on to submit that the appellants were ready to refund the money paid by the respondent in respect of the land in dispute.

Resisting the appeal, the respondent submitted that the case subject to the appeal was instituted by the appellants. He contended that the land in dispute had an offer which was in the name of the person who sold the land to him. He went on to submit that the appellants defaulted to pay him in accordance with mediation reached before the trial tribunal. He therefore urged the Court to consider the evidence on record and arrive at a just decision.

In his rejoinder, the 2nd appellant reiterated his submission that the trial tribunal had no jurisdiction to try the matter.

Having examined the evidence on record, the submissions by both parties and the grounds of appeal, I am of the opinion that, this appeal can be disposed of by addressing only the first ground. Did the trial Tribunal have pecuniary jurisdiction to entertain the matter before it? It is trite law that jurisdiction of the court is created by the

statute. Parties cannot agree to confer to the court jurisdiction which it does not have. Since the question of jurisdiction of a court is so paramount, it can be raised at any stage of the case even at an appellate level. Upon being satisfied that, the trial court or tribunal lacked jurisdiction to entertain the matter, the appellate court proceeded to declare the proceedings of the trial court a nullity. This position has been stated in many cases. See for instance, the case of **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported) when the Court of Appeal held that:

"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."

The Court of Appeal went on to cite with approval the decision of the East African Court of Appeal in **Shyam Thanki and Others vs New Palace Hotel** [1971] 1 EA 199 where it was 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. "

In terms of section 13 (1) of the LDCA, the primary function of the Ward Tribunal is to secure peace and harmony in the area in which it is established. That function is exercised by mediating parties to arrive at a mutual acceptable solution on any matter related to land which is within its jurisdiction. Now, pursuant to section 15 of the Land Disputes Courts Act, Cap. 216, R.E 2019 (the LDCA), the pecuniary jurisdiction of the Ward Tribunal is limited to all proceedings of a civil nature relating to land in which the landed property in dispute is valued up to three (3) million shillings. The said provision reads:

"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 record of the trial tribunal in the present appeal bears it out. The respondent had bought the disputed land in consideration of Tshs. 6,000,000. Further, he had already paid an advance of Tshs.

4,000,000. That implies that, the value of the disputed land was Tshs 6,000,000. The said value was over and above three million shilling provided for under section 15 of the LDCA. Although the complaint was instituted by the appellants, it was not a ticket for the trial tribunal to entertain the matter which is beyond its pecuniary jurisdiction. Likewise, much as the Ward Tribunal had no pecuniary jurisdiction to entertain the matter, it had no mandate to mediate the parties to reach the alleged amicable settlement. Its power to mediate the parties was limited to the pecuniary jurisdiction vested to it by the statute. Although this issue was raised before the first appellate Tribunal it was not addressed at all.

In view of the foregoing, the proceedings of the trial tribunal and first appellate Tribunal are vitiated. In the exercise of the revisional power vested in this Court by section 43 of the LDCA, I hereby nullify the proceedings of the Stendi Kuu Ward Tribunal at Mugumu and the District Land and Housing Tribunal for Mara at Musoma. In consequence:


1. This appeal is struck out because it arose from the proceedings which are a nullity.

2. The judgments and orders of the Stendi Kuu Ward Tribunal and the District Land and Housing Tribunal are quashed and set aside.
3. A party which is still interested to pursue the matter is at liberty to file a fresh matter before a court or tribunal with competent jurisdiction but subject to the law of limitation.
4. Costs are not awarded due to the circumstances of this case.

It is so ordered.


DATED at MUSOMA this 25th day of March, 2021.




E. S. Kisanya
JUDGE

Court: Judgment delivered in open Court, this 25th day of March, 2021, in the presence of the 2nd appellant and the respondent, and in the absence of other appellants. B/C Simon-RMA present.

Right of appeal is well explained.


E. S. Kisanya
JUDGE
25/03/2021