

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LAND APPEAL NO. 34 OF 2020

(Arising from decision of the District Land and Housing Tribunal of Mwanza in Land Application No. 359 of 2015 Before Masao E. of 15th July, 2016)

JAMILA SALEHE.....APPELLANT

VERSUS

LUCAS HUNGU MZINZYA1ST RESPONDENT

MUSSA ISSA HAJI2ND RESPONDENT

JUDGMENT

19 & 29/04/2021

RUMANYIKA, J.:

With regard to the claim of shs. 12,337,323/= by Mussa Issa Haji (the 2nd respondent), according to records against Lucas Hungu Mzinzya and Jamila Salehe the 1st respondent and appellant respectively, the appeal is against judgment on admission of the District land and Housing Tribunal for Mwanza (the DLHT) dated 15/7/2016 with respect to the outstanding loan which the spouse appellant and 1st respondent they owed to Azania Bank Limited but the 2nd respondent paid the money in exchange of the respective collateral matrimonial squatter house No. 013/117 situated at Isamilo area, Mwanza City.

The 5 grounds of appeal revolve around points as under:-

1. That the DLHT lacked pecuniary jurisdiction.
2. That the DLHT denied the appellant right to be heard.
3. That the DLHT erred in law and fact not holding that the contract alleged breached actually it was unenforceable.
4. That the judgment on admission was due to procedural irregularities unfounded.
5. That the DLHT ignored terms and conditions of the contract.

Messrs Naomi Paulo and Mussa Mhingo learned counsel appeared for the appellant and 2nd respondent respectively much as pursuant to my order of 8/4/2021 having been dully served on 13/04/2021, yet the 1st respondent defaulted and for that reason his appearance was dispensed with hence with respect to the latter the exparte judgment.

Through mobile numbers 0766007301 and 0754918035 the learned counsel were, by way of audio teleconferencing heard respectively.

Having had dropped all except grounds 1 and 4 of the appeal, Ms. Naomi Paulo learned counsel submitted; **(1)** that as before the current amendments Section 33 (2) (a) of the Land Disputes Courts Act Cap 216 RE. 2019 limited it to shs. 50.0m only, and according to the Valuation

Report the property in dispute had value of shs. 55.0m, except the High Court of Tanzania the DLHT had no pecuniary jurisdiction **(2)** that the impugned judgment on admission was tainted with illegalities namely nowhere on record the respondents seem to have had really as admitted the claims as alleged in the judgment. We shall pray for costs of the appeal and the case to be determined afresh by competent court. Ms. Naomi Paulo learned counsel further contended.

Mr. M. Mhingo learned counsel submitted; (1) that as long as the principle claim was shs. 12,337, 323/=, the DLHT had pecuniary jurisdiction market value of the house notwithstanding (2) that the appellant may have had not been recorded as she consented to the judgment yes, but the omission wasn't that fatal much as at times the appellant and 1st respondent they had admitted the claims (cases of **Brookbond Tanzania Limited v. Malya (1975) 1 EA 266 and Hirai v. Kassam (1952) 19 EACA 131**). That a judgment could only be nullified say where it was proven fraudulently procured or something. The judgment on admission therefore it was not appealable. We pray for its dismissal and costs. Mr. Mussa Muhingo further contended.

From the record, but in a nutshell it is clearly evident that with respect to House No. 013/117 at Isamilo (the matrimonial house), the 2nd and 1st respondents having had contracted on 7/5/2013 that on behalf of spouses the latter repay them the loan to Azania Bank Limited such that should they fail to refund the transferred loan he take the house but contrary to their agreement one having had repaid the loan the appellant and husband neither vacated the house nor refunded him. Then the 2nd respondent instituted the case and here they are.

Frankly I don't think the issue is whether the appellant and husband admitted the claims but rather whether, in terms of market value the house was worth the amount claimed much as contrary to the value stated at paragraph 5 of the application (shs. 9.80m), therefore with pecuniary jurisdiction of the DLHT vis avis the respective valuation report, if at all its market value stood at shs. 55.0m (Item 23.0 of the report refers) the answer is no. But I think in the event of breach of contract it is not value of collateral that counts for determination of pecuniary jurisdiction of the court but the principal sum claimed as said, in this case shs. 9.80m. One may wish in the attentive to argue that nevertheless the sum fell in the ward tribunal's jurisdiction yes, but on this one I would only hold that on

this one, the law governing pecuniary jurisdiction it was not intended to declare the higher tribunals impotent but simply to relieve them from the would be unnecessary over loading smaller cases. Ground 1 of the appeal is dismissed.

With regard to admission of the claims or otherwise by the appellant and the 1st respondent the issue needs not hang me long for two (2) main reasons:- **One;** from the top, looking at paragraph 3 of the impugned typed judgment their admission was not farfetched much as the appellant had not pleaded falsification of the evidence or in any way, as Mr. Mhingo learned counsel argued a complaint that the judgment was procured fraudulently to warrant nullification (case of **Bookbond Tanzania Limited** (supra) Moreover, basing on the same terms with Azania Bank Limited, the spouses having had consented to the outstanding loan being transferred to, and on behalf of the latter the 2nd respondent was done since, the collateral house should have gone. Just like the bank would had forfeited it leave alone also the appellant's admission during hearing of the respective execution application where, in blacks and whites still the spouses admitted the claim but begged for relaxation of the terms of payment to the 2nd respondent the appellant therefore now cannot deny

the truth much as it is trite law that court records are serious records that cannot be impeached casually because they tell what actually had transpired **Two;** With all what is on record and what I have hereinabove endeared to discuss, with regard to the actual amount of shs. 9.8m or even less amount and market value of the house, strictly speaking the parties were bound by terms and conditions of the agreement. The price may have not been enough but at the time adequate. However, as between them and in all fairness, if dictates of common law and equity brought the same results so much the better.

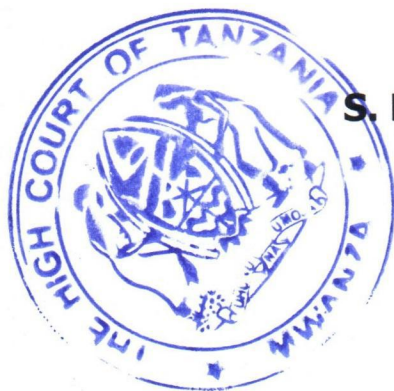
In the upshot, the appeal is allowed only to the extent that the appellant and 1st respondent shall, with effect from 29/05/2021 in six (6) equal installments at an interval of three (3) months pay the 2nd respondent shs. 24,000,000/=. Each party shall bear their costs.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
26/04/2021

The judgment delivered under my hand and seal of the court in chambers this 29th April, 2021 in the absence of the parties.



S. M. RUMANYIKA

JUDGE

29/04/2021