

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPEAL NO. 27 OF 2020

*(Arising from the District Land and Housing Tribunal for Kondoia in
Land Appeal No. 92 of 2019 which originated from Paranga Ward
Tribunal in Land Case No. 8 of 2019)*

KASSIMU HASANI MSURI

(Administrator of the estate of the

Late **HASSAN MSURI**).....**APPELLANT**

VERSUS

HASSANI ATHUMAN.....**1st RESPONDENT**

ALLY SHABANI DELEMA@HAMIDU ALLY.....**2nd RESPONDENT**

SALIMU IDD.....**3rd RESPONDENT**

MARIAM NYOKA.....**4th RESPONDENT**

HAZILA JUMA.....**5th RESPONDENT**

JUDGEMENT

Date of JUDGEMENT- 26TH FEBRUARY 2021

Mansoor, J:

This is an appeal by the appellant Kassimu Hassan Msuri from the decision of Kondoia District Land and Housing Tribunal (*'District Tribunal'*) which decided that the trial Ward Tribunal lacked pecuniary jurisdiction to entertain the dispute (Land Case No. 8 of 2019) before it.

The brief facts of this case is that, the appellant sued five respondents herein before the Paranga Ward Tribunal claiming for a plot

of land of one acre valued at THz 2,800,000/= located at Kelema Village in Kondo District. The trial tribunal having heard the case it decided in favour of the appellant.

The respondents dissatisfied, appealed against the decision before the District Tribunal complaining among others that the trial Tribunal lacked jurisdiction to entertain their case as the suit land had a value of THz 60,000,000/=. The District Tribunal having been satisfied that the suit land had houses of each of the five respondents, it allowed the appeal solely on ground that the value of the suit land was beyond the jurisdiction of the Ward Tribunal.

The appellant discontented, hence lodged this appeal, where by the appellant raised five complaints, but in his submission he dropped the fifth ground. The second and third ground was argued jointly while the first and fourth ground was argued separately. In short the heated debate by the parties herein was mainly on the jurisdiction of the trial tribunal and the biasness of the District Tribunal Chairman.

The appellant in his written submission he faulted the District Tribunal decision maintaining that the appellant in suing the

Respondents presented the value of the suit land which is THz 2,800,000/=, that, that was the value of his land. The appellant did not consider the development made by the alleged trespassers, in the suit land. To him, he argued, it was enough to consider the value of his land only and not the development made by the trespassers because that was its actual value before the alleged trespass. That if he was to make valuation by a professional valuer as the District Tribunal had ordered, the valuer in his duty of assessment would meet with obstacles from the trespassers. He submitted that it would be totally unfair to force a person whose land is invaded by trespassers who again have built houses thereon to order a lawful owner to make professional valuation of his land and developments made by the trespassers for purposes of determining pecuniary jurisdiction of a court or tribunal, as for professional valuers to know the value of developments made will have to enter into the building and inspect say walls, floors, fittings, roofs and even to interview the owner.

The appellant's view was that, the trial tribunal correctly considered the value of the suit land presented by the appellant because all its members were residents of Paranga Village so they knew the suit land and to know the value of the suit land did not require a rocket science.

It was the appellant's further submission that the Ward Tribunal also to be certain on the value of the suit land they based on the sale agreements submitted by each respondents which showed the value not exceeding the pecuniary jurisdiction of the subject matter. He added that though there is no law nor practice which require a valuation report to prove the value of the suit land during institution of the land application but when the respondents appealed before the District Tribunal, they ought to have presented their valuation report. To him, it was wrong for the District Tribunal Chairman to speculate and conclude that the value of the suit land was more than that which was declared in the Ward Tribunal something which was not even raised by the respondents as an objection in the trial tribunal.

The appellant backed his arguments by the case of **Lweshabura Mzinja vs. Julieta Jacob, Land Appeal No. 7 of 2005 HC Land Division at Dar Es Salaam(unreported).**

On the issue of biasness of the District Tribunal Chairman, the appellant argued that, the Chairman having allowed the appeal was seriously biased in directing the appellant to make valuation of his land and the shanty structures erected by the respondents. He added that bias was vivid when the Chairman believed that the value of the suit

land and structures illegally erected exceeded pecuniary jurisdiction of the Ward Tribunal. The appellant's view was that having seen that the trial tribunal lacked jurisdiction and having failed to determine the case on merit, then he should have issued an injunction to restrain the respondents from continuing developing the suit land.

The appellant finally prayed this Court to allow this appeal with costs.

On the other hand, the respondents in their joint reply to the appellant's written submission, argued that it is a principle of law that, any question on point of law can be raised at any stage of the proceedings even on appeal. That, issues of jurisdiction of the court is a point of law and in the case at hand the jurisdiction of the Ward Tribunal is provided under S. 15 of the Land Disputes Court Act, Act No. 2 of 2002 (R.E 2019). The respondents had their stand on the case of **Richard Julius Rukambura vs. Issack Ntwa Mwakajila and Another, Civil Application No. 3 of 2001 CAT Mwanza (Unreported).**

The respondent argued that four respondents out of five had constructed modern houses on the suit land, to them, even if there was no valuation report conducted by any party to the suit, still by simple calculation the costs of construction of four modern houses cannot be at THz 3,000,000/=.

On the ground of biasness of the District Tribunal Chairman, the appellants submitted that there was no any biasness, that the Chairman applied logic to order the appellant to make a valuation report in order to help him to know the proper forum within which to lodge his complaint that is the District Tribunal or the High Court. They further added that it would not have been proper if the District Tribunal had ordered injunction on the respondents restraining them from developing the suit land since the appeal was not determined on merit. In the respondents prayed this Court to dismiss this appeal with costs.

On the issue of value of the suit land, there is no dispute between the parties that the suit land had some developments at the time of the institution of the application at the trial tribunal, a cross-check up on the sketch map drawn by the trial tribunal, depicts six houses of the respondents standing on the suit land.

S. 15 of the Land Disputes Court Act, Cap. 216 R.E 2019 provides;

'Notwithstanding the provision 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 appellant argues that the trial tribunal was right to consider the value of the suit land before the alleged trespass and development which was THz 2,800,000/= while the respondents contends that value of the suit land to be considered is the current value that is the value of the suit land at the time of instituting the application which in this case was THz 60,000,000/= and so the trial tribunal lacked jurisdiction.

A plain interpretation of S. 15 above with respect the words *the jurisdiction of the Tribunal shall be limited to the disputed land or property valued at three million shillings* Simply means that the land in question should be in dispute and an aggrieved party should be seeking redress from the tribunal, then the law comes in to limit the Ward Tribunal not determine the land dispute which its value exceeds THz 3,000,000/=.

Then, if this Court is to go by the submission of the appellant, that the Ward Tribunal was right in considering the value of the land before trespass in ascertaining its jurisdiction would be going against the confines of S. 15 above, because 'before trespass' means at the time

when there was no dispute yet the law gives jurisdiction to the Ward Tribunal in solving land disputes to the land which is in dispute.

Therefore, this Court is of the strong view, as it was submitted by the respondent, that that value of the suit land to be considered is the current value that is the value of the suit land at the time of instituting the application. The land in question in this case at the time of institution of the case had six houses. That being the case, then the appellant was supposed to declare to the trial Ward Tribunal the value of the developed land at the time of instituting his case so that the tribunal could ascertain its jurisdiction over the dispute. Otherwise, by declaring the value of the suit land before the alleged trespass, this amounted to wrong assumption of jurisdiction by the trial Tribunal as the value declared was far less than its actual value after developments by the respondents.

Now, the question which lingers before this Court is what was the value of the suit land at the time of the institution of the application? The appellant argues that it was wrong for the District Tribunal to speculate on the value of the suit land and he went further that it erred in directing the appellant to conduct a valuation something which could be hampered by the respondents who resides on it.

Rule 3(2) of the Land Disputes Courts(The District Land and Housing Tribunal) Regulations, 2002, provides;

"An application to the Tribunal shall be made in the form prescribed

in the Second schedule to the these Regulations and shall contain:

(a).....

(b).....

(c).....

(d) *estimated value of the subject matter of the dispute.*

(e).....

(f)....."

I must state categorically that, what is needed by the parties and courts/tribunal in ascertaining the value of the suit land is just logic. The law is clear as to what a complainant(s) in the District Tribunal should do when instituting their cases, that is just to estimate the value of the intended suit land.

For complaints to be instituted in the Ward Tribunal as it was in this case, the law is silent, however it has been a practice to estimate the value of the intended suit land when a complainant is making a complaint (orally or written) to the Ward Tribunal's secretary. So again it is only logic which is applied. Now considering the six modern houses developed by the respondents on the suit land, logic tells this Court that the value of the suit land was far beyond the jurisdiction of the trial Ward Tribunal, so to speak the District Tribunal rightly allowed the appeal on ground of lack of jurisdiction on the trial tribunal.

And to add, the issue touching jurisdiction of the court/tribunal being a point of law, as rightly submitted by the respondents, it can be raised at any stage of the proceedings, even on appeal, it can be raised

even by the court/tribunal *suo mottu*. See the case of **Richard Julius Rukambura** above.

On the submission by the appellant on failure of the District Tribunal to order an injunction to the respondents from using or developing the suit land, again as it was rightly pointed out by the respondents, this Court finds that the District Tribunal was justified not order reflection because the case was not decided on merits, that is the rights of the contestants was not ascertained. Therefore, the submissions that the District Tribunal Chairman was biased are unfounded.

In view of the foregoing discussion this court finds that this appeal lacks merit and is hereby dismissed with costs. The appellant is at liberty to lodge his application to the proper forum.

I so order.

DATED at DODOMA this 26th day of FEBRUARY 2021.




L. MANSOOR

JUDGE

26TH FEBRUARY 2021