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

**(LAND DIVISION)**
**AT ARUSHA**

**MISC. LAND APPEAL NO. 29 OF 2020**

*(C/F from the District Land and Housing Tribunal for Manyara at Babati in Land Appeal No. 19 of 2019; Originating from Qash Ward Tribunal Land Case No. 33 of 2017)*

**SEPUTE DARABU ..... 1ST APPELLANT**

**YUSUPH SELEMANI ..... 2ND APPELLANT**

***Versus***

**JOSEPHAT JOSEPH SHAYO ..... RESPONDENT**

**JUDGMENT**

*25th February & 23rd April, 2021*

**Masara, J.**

The Respondent filed a claim of a piece of land measuring 14 acres (the suit land) before Qash Ward Tribunal (the trial Tribunal) in Land Case No. 33 of 2017. He cited trespass to land as the cause of action. After hearing of the claim, the trial Tribunal declared the Respondent the lawful owner of the suit land. The Appellants were dissatisfied, they appealed to the District Land and Housing Tribunal for Manyara (the Appellate Tribunal) vide Land Appeal No. 19 of 2019. The Appellate Tribunal dismissed the appeal upholding the decision of the trial Tribunal. The Appellants, still aggrieved, have preferred this appeal on the following grounds:

a) *That, the learned chairman of the appellate tribunal misdirected himself in holding that the appellants had no opportunity of raising the issue of pecuniary jurisdiction at appeal as the same ought to have been raised at the trial tribunal;*
b) *That, the learned chairman of the appellate tribunal misdirected himself when he failed to appreciate the fact that the trial tribunal lacked pecuniary jurisdiction as the value of the suit land exceeds three million (TZS. 3,000,000/=);*

c) *That the learned chairman of the appellate tribunal erred in holding that the suit land is known by the parties without considering the fact that the respondent is the one who filed the case at the trial ward tribunal; the respondent was therefore required to state clearly the size and boundaries of the suit land that he claimed against the appellants bearing in mind that the suit land is unsurveyed land;*
d) *That the appellate tribunal misdirected itself in declaring the respondent as the lawful owner of the suit land notwithstanding the fact that the respondent did not prove his ownership of the same both at the trial tribunal and in the appellate tribunal; and*
e) *That, the appellate tribunal misdirected itself as it failed to analyse and construe the grounds of appeal as presented by the appellants.*

At the hearing of the appeal, the Appellants were represented by Mr. Ephraim Koisenge, learned advocate, while the Respondent was represented by Ms Jane Ayo, learned advocate. The appeal was heard *viva voce*.

Let me state *apriori* that even without venturing into the facts of the case leading to this appeal and without indulging into the submissions of the learned advocates for the parties, I should point out that there are several anomalies from the records of the trial Tribunal and the Appellate Tribunal which I find appropriate to address. These anomalies make determination of the appeal rather problematic

The first one is on the case number that was heard and determined by the trial Tribunal. The record shows two distinct case numbers but with the same parties. The cases referred therein are Case No. 33 of 2018 and Case No. 27 of 2017. At the file cover of the trial Tribunal, it is referred as Case No. 33 of 2018. That is contrary to the judgment where it is referred as Case No. 33 of 2017-2018. The proceedings refer to Case No.

27. Also, counsel for the Appellants refer to Case No. 33 of 2017. What is more disturbing is the judgment of the Appellate Tribunal. At its heading, it shows that it originates from Qash Ward Tribunal Case No. 33 of 2017, but the opening statement of the judgment refer to Case No. 27 of 2017. For the purpose of clarity, it reads:

> *"The appellant (sic) aggrieved by the decision of Qash Ward Tribunal in land case No. 27 of 2017 decided in his disfavour, he (sic) lodged this appeal to challenge the decision given and prayed the appeal to be decided in his favour that he (sic) is the lawful owner of the disputed land".*

From the above prescript, it is not clear which case number the instant appeal emanates from. That is a serious anomaly since the case number in the proceedings and the one in the judgment are not one and the same.

In law and practice, each case is assigned a distinct case number distinguishing it from all other cases. Therefore, this Court has failed to comprehend as to the exact case number that was decided in the trial Tribunal. This was not addressed by the counsel for the parties either purposely or unknowingly, otherwise it could have been resolved at the earliest opportunity. Before that anomaly is fully resolved, this Court cannot be at the best position to adjudge the appeal.

Another serious anomaly is some missing records in the trial Tribunal proceedings. The record does not include testimonies of the Appellants (defendants) at the trial Tribunal in the typed proceedings. The record is also silent on the visiting of the *locus in quo*. In his judgment, the Appellate chairman, at page 7 of the typed judgment, stated that the

parties visited the *locus in quo*, but the record is silent. This is what he said:

> *"The Ward Tribunal did hear parties and their witnesses and* ***visited the site.*** *In my view the Ward Tribunal is in the best position to assess evidence and they did I see nothing to interfere their findings."* (emphasis added)

Further, the trial Tribunal proceedings do not show the coram of the members who participated in the hearing of the case. Members are only mentioned in the judgment. Missing names of the Members who participated in the hearing contravenes section 4 of the Ward Tribunals Act. It is also on record that the suit at the trial tribunal was against three people. However, both at the Appellate Tribunal and before this Court, only two Applicants appear. No explanation is given for the missing party.

There are other anomalies on record but those I have endeavoured to explain suffice to constrain my ability to give an informed or rational judgment on the grounds of appeal preferred. Without having the anomalies rectified, the judgment of this Court will be of no legal effect since the rights of the parties herein cannot be determined in the midst of the mentioned anomalies. Without ascertaining the proper case number that was determined in the trial Tribunal, it will be difficult for this Court to ascertain whether there was one or more cases involving the parties here in. That also apply to missing evidence of the Appellants and record of the visiting of the *locus in quo*. Further, the fact that the quorum of the members who sat at the hearing of the case in the trial Tribunal is not indicated, any decision emanating therefrom invariably contravenes the legal requirements on trials by ward tribunals.

The issue is what would be the best cause of action given the highlighted anomalies. I am aware that as parties are legally represented, I am duty bound to ask them to address me on the said short comings. That notwithstanding, I am of the view that they are not in a position to change what appears in black and what in the proceedings and judgment of the two lower tribunals. The best I can do is to remit back the file to the trial Tribunal for it to rectify the anomalies, and compose a fresh judgment. In doing so, I will invariably have to nullify the decision of the Appellate Tribunal as well.

Consequently, in the exercise of revisional powers conferred to me under section 43(1)(b) of the Courts Land Disputes Settlements Act, Cap. 216 [R.E 2019], I hereby quash and set aside the judgment and proceedings of the Appellate Tribunal as well as the judgment of the trial Tribunal. The file is hereby remitted back to the trial Tribunal for it to correct the anomalies and compose a fresh judgment expeditiously. Considering that the issue leading to this decision raised by this Court *suo motu*, I direct that each party shall bear their own costs.

Order accordingly.


Y. B. Masara
**JUDGE**
23rd April, 2021