

**THE HIGH COURT OF TANZANIA
(DAR ES SALAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL APPEAL NO. 218 OF 2019

(From Civil Case No. 2 of 2018 at the Court of the Resident Magistrate for Morogoro
at Morogoro)

ASHA RASHID ONYEZI (CHONGWE)APPELLANT
VERSUS
JASTINE MELI (Administrator of deceased
Chaulembo Meli's estate) RESPONDENT

RULING

Last Order: 28/5/2021
Judgment: 22/6/2021

MASABO, J

Disgruntled by the decision of the Court of the Resident Magistrate for Morogoro Civil Case No. 2 of 2018 which dismissed her claim of Tshs 15,000,000-/= against the respondent, the appellant has come to this court armed with five grounds of appeal namely; that.

- i) The trial magistrate erred in law and facts for not considering that exhibit D1, D2 and D3 involved different parties namely *Asha Rashid v Selani Meli* while the defendant in this suit is Justine Meli and involving a different disputed property is not the same;
- ii) the trial court erred in law and fact for failure to consider that the Appellant was living within the farm that was compensated since 1974 which is different from the one filed in probate for compensation;
- iii) the court erred in fact and law for not considering that the disputed farm in respect of which the defendant collected compensation is

located at Chanyumbu village Morogoro and the defendant's letter of administration was granted by Mlandizi Primary Court while the defendant's father's farm is located at Mkulazi Morogoro where Mlandizi Primary Court at Pwani has no jurisdiction over the said probate;

- iv) the court erred in fact and law for failure to recognize that the farm which the defendant collected compensation from DAWASA and the farm that the same defendant filed probate and administration Cause No. 37 of 2012 as the probate for Mkulazi farm and the court and the court that ruled it has no jurisdiction; and
- v) the trial court erred in fact and law for failure to recognize that the appellant's mother's farm is at Chanyumbu village whereas the respondent's farm is at Mkulazi village and that the farm in respect of which compensation was paid is at Chambumbu hence, it belongs to the appellant.

Briefly, the parties contend of compensation paid by the Dar es Salaam Water and Sanitation Authority (DAWASA) in respect of developments effected on a parcel of land located at Chanyumbu Village in Mkulazi ward within Ngerengere area in Morogoro (the suit land) which was acquired for installation of water infrastructure. In 2018, Asha Rashid, the appellant herein, sued the respondent in Civil Case No. 2 of 2018 before the Civil Case No. 2 of 2018. In this suit, the appellant herein, sued the respondent in the Court of the Resident Magistrate for Morogoro, alleging that the respondent fraudulently obtained an advance payment of Tshs 218,916/= and was due to receive a final payment of Tshs 886,081.42 from DAWASA whereas he has no any claim over the suit land.

She alleged that, she was the rightful power of the suit land having inherited it from her deceased mother one Selani Said Hoza, who obtained the same during "Operation Vijiji" in 1974. Thus, the respondent had no right to right to be compensated as he has neither a claim of right nor interest on the suit land.

On his part, the respondent while not disputing receipt of the payment from DAWASA, he pleaded that, he is the lawful owner of the suit land as he inherited it from his deceased father one Chaulembo Meli. He narrated further that, for a long time, one Selan Meli (who is now deceased) was occupying the land up to 2008 when he moved to Dar es Salaam whereupon the respondent took possession of the same. On return from Dar es Salam, Selan Meli sued the respondent before the Village Land Tribunal. At the conclusion of this matter which was litigated through the Ward Tribunal, The District Land and Housing Tribunal for Morogoro and later in this court in Land Appeal No. 95 of 2013, the respondent was declared the lawful owner of the suit premise. Thus, the allegations that he fraudulently obtained the compensation are without merit. After hearing all the parties, the court dismissed the suit for want of proof hence the present appeal.

Hearing of the appeal proceeded in writing. The appellant appeared in person whereas the respondent was represented by Mr. Petro Mselewa, Advocate. Both parties filed their submissions timely as per the court schedule. Upon reading their submissions and the court record, I observed that there was a decisive point of law to be resolved prior to the determination of the grounds of appeal. Both parties were summoned

with instruction that they should appeal in court on 28th May 2021 to address the court on the competence of the trial court proceedings, specifically, whether the Court of the Resident Magistrate for Morogoro (the trial court) was clothed with the requisite jurisdiction to entertain the matter.

When the parties appeared before me on 28th May, 2021, Mr. Mselewa, counsel for the respondent, submitted that, while in the trial court he made an observation that the court had no jurisdiction to entertain the matter as it revolved around issues of ownership of land to which the Court of the Resident Magistrate has no jurisdiction. But his observation was considered misconceived, because, in the opinion of the trial court, the matter between the parties is purely civil as it revolves around probate matters. Thus, the trial court was clothed had the requisite jurisdiction. Being lay and unrepresented, the appellant did not have any valuable input. She informed the court that, apart from the points contained in her written submission in support of her appeal which was drawn for her gratis, she had nothing to add.

I will proceed to determine this issue first because, as intimated earlier, the issue of jurisdiction is decisive and capable of disposing of the appeal. It is an established principle in our jurisdiction that, before entertaining any matter, the court should be certain of its jurisdiction. In appeals, it is now settled that before an appeal is determined on the merits on issues not touching on the jurisdiction of the trial court, the appellate court must first ascertain whether the proceedings giving rise to the appeal were competently before the trial court otherwise, it may risk entertaining an

appeal emanating from nullity proceedings (**Aloisi Hamsini Mchuwau & Another Vs Ahamadi Hassani Liyamata**, Criminal Appeal Number 583 of 2019, Court of Appeal of Tanzania (unreported)).

As I embark on this task, I have found it pertinent to state from the outset that, it is a trite law that, jurisdiction of courts is a creature of statutes not of the parties or the court itself. Neither the court nor the parties can cloth a court with the jurisdiction it does not have (See **Israel Misezero @ Minani vs Republic**, Criminal Appeal No. 117 of 2006, Court of Appeal of Tanzania and **Madeni Nindwa vs Republic**, Criminal Appeal No. 350 of 2016, Court of Appeal of Tanzania (all unreported)).

In the present case, the matter was tried in the Court of the Resident Magistrate, established under section 5(1) of the Magistrate Courts Act [Cap 11 RE 2019], which provides as follows:

5.-(1) The Chief Justice may, by order published in the *Gazette*, establish courts of a resident magistrate which shall, subject to the provisions of any law for the time being in force, exercise jurisdiction in such areas as may be specified in the order. [emphasis added]

As it could be seen from this provision, the original jurisdiction of a Court of the Resident Magistrate is exercised subject to other laws, which include among others, provisions as to pecuniary jurisdictions and laws conferring exclusive jurisdiction to certain courts. One of such laws is the Land Act, Act [Cap 113 RE 2019], The Village Land Act [Cap 114 RE 2019]

and the Land Disputes Courts Act [Chapter 216, RE 2019] which vests exclusive jurisdiction over land disputes on land courts established section 167 of the Land Act and Section 3 and 4 of the Land Disputes Act which states as follows:

3.-(1) Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.

(2) The Courts of jurisdiction under subsection (1) include-

- (a) the Village Land Council;
- (b) the Ward Tribunal;
- (c) the District Land and Housing Tribunal;
- (d) the High Court; or
- (e) the Court of Appeal of Tanzania

4.-(1) Unless otherwise provided by the Land Act, no magistrates' court established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act.[emphasis added]

(2) Magistrates' courts established under the Magistrates' Courts Act shall have and exercise jurisdiction in all proceedings of a criminal nature under the Land Act and the Village Land Act.

Accordingly, where the dispute between the parties is of the nature of a land dispute, defined under section 2 of Cap 216 to encompass any case where a person complains of and is aggrieved by the actions of another person over land which is broadly defined in the same Act to include; the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land; it cannot be adjudicated in ordinary courts. In the present case, the records vividly demonstrate that, the dispute giving rise to this appeal was deeply entrenched on the dispute over ownership of the disputed land. The question as to whether compensation was correctly paid to the respondent could not be conclusively resolved before determining who between the parties, was the rightful owner of the suit land. This can be clearly seen in the issues of determination framed by the trial court as appearing on page 3 of the trial court's judgment. Four issues were framed:

- (i) Whether the disputed land is part of the estate administered by Asha Rashid Onyezi, the plaintiff;
- (ii) Whether the disputed land part of the estate administered by Justine Meli, the defendant;
- (iii) Whether the defendant had legal right to receive the compensation from DAWASA over the disputed land, and
- (iv) Whether there are any other reliefs parties are entitled to.

In determining these issues at page 9 of the word-processed judgment, the trial court held that:

I find it appropriate to believe the defendant to be the actual owner and proper administrator of the disputed land which was subject of the compensation before DAWASA [Emphasis added]

With this self-evident finding of the trial court, it is crystal clear that the trial court overlooked the issue of jurisdiction and proceeded to entertain a matter to which it had no jurisdiction as such jurisdiction is specifically ousted by section 4(1) of the Land Disputes Act. The Court of the Resident Magistrate for Morogoro, and other courts in its category, had no jurisdiction to determine who was the actual owner of the suit premise. In the foregoing, the judgment and decree of the trial court has been rendered a nullity as, in law, a decision made without jurisdiction is a nullity (**Ramadhani Omary Mtiula vs Republic**, Criminal Appeal No.62 of 2019, Court of Appeal unreported).

Before I wind up, let me briefly remark on Mr. Mselewa's averments that he unsuccessfully raised the issue of jurisdiction in the trial court but it was found misconceived on the ground that the dispute between the parties is a probate matter. I have carefully scrutinized the record to decipher the truth of the averment but none came to my attention which entails that the same was not raised. Assuming that it was unsuccessfully raised as averred by the learned counsel, would that change the above finding? The answer is certainly in the negative. As intimated earlier, jurisdiction is not a creature of the parties or the court itself. Just as the

parties cannot agree to confer jurisdiction to a court, a court can not cloth itself with the jurisdiction it does not have.

Under the premise, I invoke the revisional jurisdiction vested in this court by section 44(1) of the Magistrates' Courts Act [Cap 11 RE 2019], revise and quash the trial court's proceedings, judgments and decree. Considering that the issue of jurisdiction was raised *suo motto* by the court, I will not award any costs.

DATED at DAR ES SALAAM this 22nd day of June 2021.




J.L. MASABO
JUDGE

