

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[LAND DIVISION]
AT ARUSHA**

LAND APPEAL NO. 15 OF 2019

*(C/f the decision of the District Land and Housing Tribunal for Arusha in
Application No. 93 of 2013.)*

LOSINYARI NOAH 1ST APPELLANT
LOTI LOSINYARI 2ND APPELLANT
SILA LOSINYARI 3RD APPELLANT
AMOS LOSINYARI 4TH APPELLANT
ELISANTE LOSINYARI 5TH APPELLANT

Versus

ARUSHA DISTRICT COUNCIL RESPONDENT

JUDGMENT

12th April & 4th June, 2021.

MZUNA, J.

This appeal is against the order of the District Land and Housing Tribunal for Arusha (the trial Tribunal) which dismissed the application for the reason that the claim was based on strict liability cases under the law governing Tort which the trial Tribunal had no jurisdiction to determine.

The present appeal is couched in the following grounds:-

- (a) That, the District Land and Housing Tribunal erred both in law and fact for dismissing the application for want of jurisdiction;*
- (b) That, the District Land and housing Tribunal erred both in law and fact for entertaining the issue of jurisdiction while the same had been determined by the same Tribunal; and*

(c) That, the District Land and housing Tribunal erred both in law and in fact when referred the Parties as Decree holders and Judgment Debtor instead of Applicants and Respondents.

At the hearing of the appeal, the appellants were represented by Mr. Hamis Mkindi, learned advocate from the Legal and Human Rights Centre (Legal Aid Unit) while the respondent was represented by Mr. Mkama Musalama, learned State Attorney. The appeal proceeded by way of written submissions.

The main issue is whether the order of the Tribunal was in contravention of another order made by another Chairperson. Second whether merely saying parties were decree holders and judgment debtors affected the merits of the case. Lastly, whether the Tribunal was right to hold that it had no jurisdiction. I propose to start with the second issue followed by the first issue then the third issue.

There is a complaint by the appellants that in the trial Tribunal ruling parties were referred to as Decree Holder and Judgment holder instead of applicants and respondent. Mr. Mkindi calls upon this court to review the proceedings so as to be assured of their legality.

Mr. Musalama is of the view that the object of Courts is determination of the rights of the parties and not to punish them on the mistakes of the courts. He argued that the errors appearing on the naming of the parties as judgment debtor and decree holder can be rectified by section 96 of the Civil Procedure Code as it is applicable per section 51(2) of Cap 216.

This anomaly as well submitted by Mr. Musalama is a mere clerical error which can be cured under Section 96(2) of the Civil Procedure Code which is also applicable

in the District tribunal in view of the provisions of section 51 (1) of the Land Disputes Courts Act, Cap 216 RE 219. It is hereby rectified accordingly so that the said ruling should read as applicants and respondent instead of decree holders and judgment debtor. I hold this view because there is no prejudice suffered by the appellants. The second issue is resolved in the respondent's favour.

The first issue is based on the complaint that upon filing the application in the trial Tribunal, the respondent raised a preliminary objection on jurisdiction of the trial Tribunal in entertaining the matter. That, the same was struck out on 13/12/2013 by Kamugisha Chairman after the respondent failed to enter appearance without notice. The suit was ordered to proceed on merit. Having heard the case, the tribunal Chairperson who took over the matter, called the parties to address her on the jurisdiction of the Tribunal while the same had been determined. In that Mr. Mkindi maintained that the Tribunal became *functus officio* in determining the issue of jurisdiction. To support his argument, he cited the case of **Issa Feisal vs. Republic**, Misc. Criminal Application No. 202 of 2019 (unreported).

On his part, Mr. Musalama said that the issue of jurisdiction can be raised at any stage of the proceeding before the pronouncement of the verdict and even at the appeal stage because it goes to the root of the matter. He cited two decisions; **Yazidi Kassim t/a Yazid Auto Electronic Repairs vs. the Hon. Attorney General**, Civil Application No. 354/04 of 2019 and **Tanzania Revenue Authority vs. Tango Transport Company Limited**, Civil Appeal no. 84 of 2009 (both unreported). That the court was not *functus officio*. He distinguished the case of **Issa Feisal** (supra) stating that in that case there was no order that disposed the matter.

Now, the question is, was the trial Tribunal barred from determining jurisdiction issue over the suit simply because it had already been struck out in the preliminary objection. The answer to this is straight forward. Jurisdiction of any Court or Tribunal goes to the root of the matter. The Court/tribunal has to ensure itself whether it has requisite jurisdiction before determining any matter before it. This was held by the Court of Appeal in **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda and 2 Others** [1995] TLR 155 at page 159, it was expressed:

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. In our considered view, the question of jurisdiction is so fundamental that the courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. **~~This should be done from the pleadings.~~** The reason for this is that it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case. **For the court to proceed to try a case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as null and void on grounds of lack of jurisdiction when it is proved later as matter of evidence that the court was not properly vested with jurisdiction.**"*

(Underscoring mine).

It is therefore of no use and a wastage of time to proceed with the matter which at the end of the day you may find you have no jurisdiction. It is for this reason, the wisdom in the case of **Tanzania Revenue Authority vs. Tango Transport Company Limited** (supra), the Court insisted that the question of jurisdiction can be raised at any stage of the proceedings even at the appeal stage. Therefore, the trial Tribunal was right the way the case was handled because the matter was struck out

not that it was heard on merits. The Tribunal was not therefore *functus officio*. This complaint has no basis, it is bound to fail.

Now, the last question is whether the Tribunal had jurisdiction to deal with the matter? In other words, was the matter a land matter or one of Tort?

The background story can give us the real picture. In the application form, the main complaint was that the appellants were claiming against the respondent as can be seen under paragraph 6 of the application. The main complaint is that after the road construction by the respondent, the flood water was directed to their premises thereby causing destruction of their houses and crops. They specifically referred to the floods that took place in the Midst of November 2012, the other one took place on ~~23/12/2012 and the last one 18 & 20 March 2013~~. Their main claim from the above disturbance was TZS 30,000,000/= as special damages, general damages and other reliefs the tribunal would deem fit to grant.

The learned advocate insisted that since the claim was land matter, the trial Tribunal was vested with jurisdiction to determine the same in terms of sections 4 and 22(1) of the Land Disputes Courts Act, Cap 216 [R.E 2019] which confers jurisdiction to it.

On the other hand, Mr. Musalama, said that the Tribunal chairperson was right to dismiss the matter as it falls under strict liability cases which are civil in nature. Mr. Musalama referred to sections 3 and 33 of the Land Disputes Courts Act as the provisions which give the Tribunal powers to entertain land matters. Mr. Musalama faulted sections 4 and 22 cited by the appellants' advocate stating that it is irrelevant.

He concluded that the jurisdiction of the trial Tribunal is statutory creature citing the case of **Syam Thanki and Others Vs. New Palace Hotel** [1972] HCD 92.

In his rejoinder, Mr. Mkindi had nothing new to re-join, instead he reiterated what was submitted in his submission in chief.

Jurisdiction of the trial Tribunal in hearing and determining cases is provided under the law establishing that Tribunal. Section 3 of the Land Disputes Courts Act read together with Section 33 of the same Act, provides for the jurisdiction of the District Land and Housing Tribunal, both general and pecuniary jurisdiction in hearing and determining land disputes. For instance Section 33 of the said Act, reads:-

"33.

(1) The District Land and Housing Tribunal shall have and exercise original jurisdiction—

(a)...(N/A)

(b)...(N/A)

(2) The jurisdiction conferred under subsection (1) shall be limited—

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed

...


(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed ..."

That provision is self explanatory. Land Application No. 93 of 2013 falls under strict liability offences. These are cases that impose liability on a party without conferring

right to the title or land. I agree entirely with the learned State Attorney that the matter could not be triable in the District Land and Housing Tribunal instead ought to have been filed in a normal court as a civil case. This issue is equally resolved against the appellants.

For the above stated reasons the Tribunal chairperson was right to determine issue of jurisdiction even after the predecessor had struck the application because issue of jurisdiction can be raised at any time even on appeal stage. Naming parties in a ruling as decree holder and judgment debtor can be rectified to read applicants and respondents as the law allows such rectification so long as there is no prejudice to the parties. Tortious liability cannot be dealt in a District Tribunal instead must be filed in a normal court as a civil matter.

This appeal stands dismissed with costs.


M.G. MZUNA,
JUDGE.
4th June, 2021

(Circular stamp: HIGH COURT ZAMBIA)