

**IN THE HIGH COURT OF 0987643q THE UNITED REPUBLIC OF TANZANIA**  
**(IN THE DISTRICT REGISTRY OF ARUSHA)**  
**AT ARUSHA**  
**MISC. LAND APPEAL NO. 45 OF 2020**

*(C/F in the District Land and Housing Tribunal Appeal No. 1 of 2020, Originally Magugu Ward Tribunal Land Case No. 26 of 2019)*

**EVALINE JUSTINE .....APPELLANT**

**VERSUS**

**VAHAEL. S. KAMENE NGOWI .....2026...RESPONDENT**

**~~JUDGMENT~~**

~~Last order.....08/04/2021~~  
~~Judgment delivered..03/06/2021~~

**GWAE, J**

In the Magugu Ward Tribunal (trial tribunal hereinafter), the respondent successfully filed a land dispute against the appellant on a claim of trespass to land measuring 4 ½ acres. Aggrieved by the decision of the Ward Tribunal, the appellant appealed to the District Land and Housing Tribunal for Babati at Babati (appellate tribunal). The appellant however lost her appeal on the ground that it was devoid of any merit. Hence, the trial tribunal decision was upheld. Thus, necessitating the appellant's filing of this appeal comprised of three (3) grounds of appeal notably;

1. That, the appellate tribunal ought to have made a finding of the fact that the decision of the trial tribunal was illegal for failure to properly evaluate evidence adduced by the appellant thereby arriving at a wrong decision in the face of the law.
2. That, the appellate tribunal erred in law and fact when it upheld the decision of trial tribunal which was marred by irregularities
3. That, decision of the 1<sup>st</sup> appellate tribunal is bad in law for lack of legal reasoning

With consensus of the parties, leave was given to dispose of this appeal by way of written submission. Parties' written submissions were duly presented and filed in accordance with the court order dated 23<sup>rd</sup> March 2021. I shall herein determine the appellant's grounds of appeal while considering the parties' respective written submissions. However, since the issue of jurisdiction and Coram are paramount in any judicial proceeding, I will therefore start with 2<sup>nd</sup> ground of appeal whose complaint centers on the pecuniary jurisdiction of the ward tribunal.

In the 2<sup>nd</sup> ground, the appellant has argued that the appellate ought to have ignored the fact that the trial tribunal lacked pecuniary jurisdiction. The appellant's side of argument in this pertinent issue is that, the sale agreements in the portions of land indicate that, the value of the suit land exceeds three million shillings, thus, far beyond jurisdiction of the ward tribunal and that the trial tribunal secretary cannot constitute a coram since he is not a member in

law. In the aspect of jurisdictional issue, the respondent remained mute save to issue of the secretary where he argued that, the secretary of the trial tribunal merely recorded the proceedings and decision.

Generally, the ward tribunals' power when entertaining land disputes are limited to the territorial and pecuniary jurisdiction as the case in the ordinary courts, the pecuniary jurisdiction of the ward tribunals is provided under section 15 of the Act (Supra) which is reproduced herein under;

15. Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 1985, 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".~~

According to provision of the law quoted above, the Ward tribunals are vested with pecuniary jurisdiction for a matter of civil nature relating to land whose value does not exceed Tshs. **3,000,000/=**. Correctly, it had been the appellant's complaint before the appellate tribunal and this court that, the trial tribunal lacked pecuniary jurisdiction. I am of the thought that, the issue of pecuniary jurisdiction is vitally important which ought to have been considered. In **Shyan Thanki and thers v. Palace Hotel** (1971) EA at 202, it was stated that;

"All the courts in Tanzania are created by statute and their jurisdictions are purely statutory. It is elementary principle of

the law that parties cannot by consent give a court jurisdiction which it does not possess”.

Looking at the parties' evidence during trial particularly, documentary evidence to wit; sale agreement regarding one (1) acre dated 18<sup>th</sup> March 2017 (Tshs. 600,000/=), sale agreement dated 19<sup>th</sup> August 2017 in respect of one (1) acre (Tshs.800,000/=) and sale agreement dated 14<sup>th</sup> September 2018 for 2 1/2 acres (Tshs. 2,500,000/=). Making an estimated value at the tune of Tshs. 3,900,000/=. As there is a plain mentioning of the values of the portions of the disputed land in the sale agreements of the disputed farm as aforesaid. Therefore, it seems to me that, no serious attention that has been taken so far by the trial tribunal as well as the appellate tribunal.


Regarding the appellant's complaint that the secretary assumed a role of members of the trial tribunal. I am alive of the principle that the secretary of the ward tribunal cannot constitute a coram. According to the provisions of section 4 of the Land Disputes Courts Act, Cap 216 Revised Edition, 2002, the Secretary of the ward tribunal is certainly not a member of the ward tribunal and therefore he cannot constitute a Coram of the ward tribunal. The secretary is therefore not a proper person to make any decision or to be part of a decision making except the one who is responsible in recording testimonies and writing judgments or decisions of the ward tribunal and any other related duty of the Ward Tribunal.

His role is therefore in conformity with his appointment by virtue of section 4 (2) of the Ward Tribunal Act (supra).

Basing on the determination of ground two above, the proceedings of the trial tribunal and its verdict are nothing but a nullity. Equally, the proceedings and the decision of the appellate tribunal which are hereby declared null and void. The same are quashed and set aside. Parties are at liberty to re-institute the dispute in the tribunal with competent jurisdiction. I shall make no order as to costs of this appeal since the parties are closely related.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**03/06/2021**