

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

PC CIVIL APPEAL NO. 14 OF 2021

MWANAISHA RASHID APPELLANT

VERSUS

MERI DEDE 1ST RESPONDENT

ODERO DEDE 2ND RESPONDENT

**(Appeal from the judgment of the District Court of Tarime
at Tarime in Civil Appeal No. 103 of 2020)**

JUDGMENT

15th and 15th July, 2021

KISANYA, J:

This is a second appeal. It stems from the decision of the Shirati Primary Court in which the appellant, Mwanaisha Rashidi successfully sued Meri Dede and Odero Dede (the respondents) on a claim for compensation of TZS 499,000 for 12 trees cut and collected from her land. In the first appeal to the District Court of Tarime by Meri Dede and Odero Dede, the said decision was quashed and set aside. The reason being, illegality during the trial court's visit to a locus in quo and failure by Mwanaisha Rashidi to prove her case on the balance of probabilities. Aggrieved, Mwanaisha Rashid has therefore preferred this appeal.

Briefly stated, the appellant case was as follows. On 27/07/2020, she found the respondent cutting and collecting trees from her land. She reported the matter to the village office which tried to resolve the matter but in vain. The appellant was then referred to the agricultural officer who valued the trees destroyed at TZS 499,000. Thereafter, the appellant instituted the case which gave rise to this appeal. The respondents did not dispute to cut the trees. However, they deposed that the land on which the trees were cut was theirs.

In view of the above factual background, when this matter was called on for hearing today, I implored the parties to address me on whether the primary court had jurisdiction to hear the matter. That issue was raised by the Court, *suo motu*, because the evidence adduced before the trial court suggested that there was a land dispute between the parties.

At first, Mr. Emmanuel Werema, learned advocate who appeared for the appellant was of the view that the trial court had jurisdiction because the appellant claimed for compensation of trees cut on her land. However, upon second reflection he argued that if there was dispute over the land, the trial court lacked jurisdiction. Being lay persons in the field of law, both

respondents had nothing substantial to submit on the above issue. They urged me to make decision in accordance with the law.

Having heard the parties, the ball is now in the Court to consider and determine whether the trial court had jurisdiction to try the matter. The law is settled that court is enjoined to consider its jurisdiction on the matter placed before it at the earliest. Since the question of jurisdiction is so fundamental, it can be raised at any stage of the proceedings, including appellate stage. This is based on the trite law that, a trial proceeded without the requisite jurisdiction is a nullity. In **Christina Alexander Ntonge vs Limi Mbogo**, Pc Civil Appeal No 11 of 2017, HCT at Dar es Salaam (unreported), this Court (Munisi, J, as she then was) cited the case of **Julius Rugambura vs Issack Ntwa Mwakajila and Another**, Civil Appeal No. 2 of 1998 (unreported), in which the Court of Appeal held that:

The question of jurisdiction is paramount in any proceedings. It is so fundamental that in any trial even if it is not raised by the parties at the initial stages, it can be raised and entertained at any stage of the proceedings in order to ensure that the court is properly vested with jurisdiction to adjudicate the matter before it."

Similar stance was stated in **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza (unreported) when the Court of Appeal had this to say on the issue of jurisdiction:

"At this point we would hasten to acknowledge the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision. We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction."

Applying the above position of law to the case at hand, the appellant's case through PW1's and PW2's evidence was to the effect that the respondent's had cut and collected trees worthy TZS 499,000 from her land. On their part, the respondents adduced that the said trees were cut in their land. The first respondent's evidence was brief. She testified as follows:

Mimi nimekata miti yangu siyo ya mdai nimekata kwenye mji wangu siyo kwake ni yangu, nimeolewa na nimezikuta na tulikuwa tunazitumia. Hayo ndiyo maelezo yangu.

When cross-examined by the appellant, the 1st respondent adduced:

"Miti ipo kwangu nashangaa unasema ni yako sijui mliongea nini na kitongoji kuhusu kesi ya mume wako na wangu."

Reading from the above evidence which was supported by the second respondent (PW2) and Saye Mahemba (PW3), I am of the view that the issue between the parties was land. The appellant's evidence suggests that the respondents trespassed into her land, cut and collected trees thereon and caused damages which gave rise to the compensation claimed in her complaint before the trial court. In that regard, the trial court was not in a position of deciding the appellant's claims without determining whether she was the lawful owner of the land on which the trees were cut. Indeed, the trial court considered and determined that issue as reflected at page 2 and 3 of the typed judgment, quoted hereunder:

*"Katika maelezo yake mdai na shahidi wake walieleza kwamba wadaiwa walikata miti yao na wao walishuhudia ukataji huo. Wadaiwa walieleza kwamba miti walikata na ilikuwa ya kwao na eneo lilikuwa lao. **Na hivyo mahakama hii ilibaki kujiuliza eneo ni la nani.***

Wadaawa waliomba mahakama ihamie eneo la tukio kuthibitisha kwamba eneo hilo lilikuwa ni la nani na miti ilikatwa au la,... Mahakama hii ilithibitisha

kwamba eneo ni la mdai. Na hivyo kuthibitisha kwamba miti ni ya mdai.”(Emphasize supplied).

In view of the above, it is clear that the trial court traversed into the issue of ownership of land. Pursuant to section 167 of the Land Act Cap. 113, R.E 2019 and section 3 (1) of the Land Disputes Courts Act, Cap. 216, R.E 2019, the jurisdiction over land disputes is vested in the Village Land Council, Ward Tribunals, District Land and Housing Tribunals and the High Court of the United Republic of Tanzania. The primary court, district court and court of resident's magistrate have no mandate to determine disputes based on land. In that regard, the trial court erred in determining whether the land in question belonged to appellant or respondents.


For the foregoing, the proceedings of the trial court and first appellate court were a nullity. Since that issue suffices to dispose of this appeal, I found it not necessary to reproduce and address the ground of appeal.

In the exercise of the revision powers vested in this Court by section 31 of the Magistrate Courts Act, Cap. 11, R.E. 2019, I hereby nullify the proceedings of the both lower courts, quash and set aside the judgments and orders thereof. Parties are thus, at liberty to file fresh petitions in a

court or tribunal with competent jurisdiction. This matter being disposed of by the issue raised by the Court, *suo motu*, I make no order as to costs.

Dated at MUSOMA this 15th day of June, 2021.




E. S. Kisanya
JUDGE

Court: Judgment delivered this 15th day of July, 2021 in the presence of Mr. Werema, learned advocate for the appellant and both respondents who appeared in persons. BC Simon present.




E.S. Kisanya.
JUDGE
15/07/2021