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

AT MUSOMA

MISC. LAND APPEAL NO. 28 OF 2021

(Arising from Land Appeal No. 176 of 2020 in the District Land and Housing Tribunal for Mara at Musoma and originating from Land Application no. 10 of 2020 at Nyamatare Ward Tribunal in Musoma)

GUNGULI R. MAUNGO..... APPELLANT

VERSUS

WILSON RUHUMBIKA .....RESPONDENT

JUDGMENT

2nd Aug and 24th Aug, 2021

F. H. MAHIMBALI, J.:

This appeal arises from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Appeal no. 176 of 2020 in which, the respondent, Wilson Ruhumbika was declared the lawful owner of the land in dispute, plot no. 222 (high density); block "H" located at Kamunyonge area at Musoma Municipality.

For better understanding of what happened, it is necessary to state the brief backgrounds as deduced from the evidence at the trial tribunal. Gunguli Maungo, the appellant herein instituted a civil case against

Wilson Ruhumbika (the respondent) at Nyamatare ward tribunal. Gunguli alleged that he bought the disputed piece of land from one Emmanuel in the year 1976 at the price of tshs. 1,800 and he went to a different city in search of green pastures. He returned in the year 2002 and found Wilson had invaded his piece of land and constructed two houses.

On the other hand, the respondent's case was that he bought the disputed piece of land in 1986 from Mkwaya Ngose at a price of 8,000 tshs.

The trial tribunal heard the matter and decided it in favour of the appellant and ordered the respondent to vacate from the disputed piece of land. The respondent being aggrieved he successfully appealed to the District Land and Housing Tribunal (DLHT) for Mara at Musoma. The appellant was not happy with this decision hence this appeal to this court by raising five grounds of appeal which are produced in verbatim as follows;

1. That, the 1st appellate tribunal erred in law and fact for failure to determine that the trial tribunal determined the dispute without disclosing pecuniary jurisdiction in the complaint form.

2. That, both the subordinate tribunals erred in law and facts for considering evidences of the land officer from Musoma Municipal Council which tendered (sic) during visiting of locus in quo contrary to the law.
3. That, both subordinate tribunals erred in law and facts for its members became witnesses in the case, contrary to the law.
4. That, the 1st appellate tribunal erred in law and facts for failure to evaluate the evidence adduced by the appellant and his witnesses in trial tribunal, appellant's evidence is stronger than respondent's.
5. That, the appellate tribunal erred in law and facts for failure to determine irregularities in both tribunal proceeding records as there is no record on when both tribunals visited the locus in quo also there is no notice of visiting locus in quo contrary to the law.

When the matter came for hearing, the appellant enjoyed the legal services of Mr. Emmanuel Gervas learned advocate while the respondent was present in person unrepresented.

At the start of his submission, Mr. Gervas, learned advocate abandoned the 3rd and 4th grounds of appeal. On the first ground of appeal, he submitted that the trial tribunal failed to determine the dispute by not disclosing the pecuniary jurisdiction of the suit land. He

stated that his client who had instituted the claim at the trial tribunal was not led to disclose the pecuniary jurisdiction of the land in dispute. He submitted further that none of the parties' testimony was clear in establishing the pecuniary jurisdiction of the suit land as per section 15 of the Land Disputes Courts Act, cap 216. In clarifying, he cited the case of **ALEXANDER MASHAURI V/S PETER NYAMHANGA,** Misc. Land Appeal no. 66 of 2020 that elaborated sufficiently on the issue of pecuniary jurisdiction.

On the second ground he submitted that the trial tribunal was wrong for taking into account the evidence of the land officer from Musoma during the visit to the locus in quo. His main point on this ground is that land officer had not prior to the visit to the locus in quo testified at the tribunal and the parties were not accorded an opportunity to cross examine the witnesses.

Lastly on the 5th ground of appeal, he submitted that there were irregularities in the trial tribunal as there are no records of the proceedings when they visited the locus in quo which is contrary to the law and vitiates the proceedings. He cited the case of **NIZAR M. H. v/s GULAMALI (1980) TLR 29** that provides the legal requirement while visiting the locus in quo. To conclude he prayed for this court to use its

revisionary powers under section 43 (1) (b) and (2) and quash and set aside the proceedings and judgment of the two subordinate tribunals and the matter be heard de novo.

Mr. Wilson, the Respondent who fended himself replied on first ground stating that according to his understanding there is no legal form at the trial tribunal as to the description of the pecuniary value of the land in dispute, hence the learned advocate has misconceived the law.

On the second ground, Mr. Wilson submitted that he considers this ground baseless as the visit to the locus in quo facilitated to clear the doubt as to whether plot no. 222 is different from plot no. 224.

Replying on the fifth ground of appeal, Mr. Wilson stated that according to his understanding the ward tribunal is less bound by legal technicalities as per law. Hence the lower tribunal decided as per the law. He prayed for the appeal to be dismissed with costs.

Re-joining Advocate Gervas stated that as per the law, there is a legal requirement that the pecuniary value of the suit land has to be known prior the tribunal determining the matter.

I have considered the evidence on record and the submissions for and against the appeal. The contention on the first ground is that the

pecuniary value of the land in dispute was not stated prior to the commencement of the hearing at the trial tribunal. The appellant is the one who instituted the case at the ward tribunal and is still the same person complaining that the ward tribunal did not lead the parties on the pecuniary value of the land in dispute. I believe it is not the tribunal's duty to state the value of the land in dispute as it is the parties who know the value of the land. Additionally, the issue of pecuniary value is a matter of evidence that needs to be proved by the party alleging that the land is more or less in the required value so as to be determined at the ward tribunal.

I have gone through the court's record, there is no evidence on the value of the subject matter stating that it was three million and above. However, as the evidence on record from both parties on the purchase price is less than 3,000,000/=, it is astonishing at this particular juncture to suggest the contrary view that the value of it is not known. The appellant being the one who lodged the case first at the Ward Tribunal as claimant without stating the value of the suit land, cannot now come at appeal stage to contest pecuniarily the fact he didn't state at the ward tribunal which the same is uncontested as per facts of the case and evidence. The failure of not stating the value of

the suit land at the trial tribunal and in the absence of express and contrary evidence pecuniarily cannot be a good ground of appeal on the basis of pecuniary jurisdiction. The cited case of **ALEXANDER MASHAURI V/S PETER NYAMHANGA,** Misc. Land Appeal no. 66 of 2020 (High Court Musoma) by my brother Kisanya, J is distinguishable from the case at hand. In the former case, my bother (Kisanya, J) dealt with an appeal in which the jurisdictional issue was raised at the trial tribunal but not dealt with and considered by the trial tribunal. He thus allowed the appeal considering the fact that the issue of jurisdiction being vital though raised, it was not dealt with or considered at all. The situation is distinct from the case at hand in which the appellant who was the claimant at the ward tribunal, not only did he mention this fact at the trial tribunal, but neither himself nor any of the case's witnesses said so at the trial, yet he raises it as a good ground of appeal. To condone it, is equal allowing a party to benefit from his own wrong on issues which are clear and settled. I'm not prepared to condone and buy such wrongs. Had he been mindful, he would have done so at the earliest opportunity stage of the case in which if to the contrary, he would have filed it at the appropriate competent court.Much as I know and 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 even 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 (East African Court of Appeal sitting at Dar es Salaam held in ShyamThanki and Others v. New Palace Hotel [1971] 1 EA 199 at 202).

However, Considering the precedent by the Court of Appeal in **SOSPETER KAHINDI vs MBESHI MASHINI** (in **Civil Appeal no. 56 of 2017**) pecuniary jurisdiction being a matter to be disclosed by the parties to the case, it must have been raised by the parties themselves at the earliest opportunity of the case. The Court of Appeal of Tanzania in **SOSPETER KAHINDI vs MBESHI MASHINI (supra)** insisted that

> *"We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction. Indeed, the [Emphasis added] Much as we agree that the issue of jurisdiction can be raised at any time, we think, in view of the orality, simplicity and informality of the procedure obtaining at the Ward Tribunal level, the appellant's concern on jurisdiction ought to have been raised at the earliest opportunity, most fittingly at start of the proceedings. It is noteworthy that in line with the applicable procedure, the parties did not exchange any pleadings and, therefore, all questions for trial were based upon the claimant's oral statement of claim and the respondent's oral reply as*

recorded by the tribunal. Both parties, then, presented witnesses to establish their respective claims of title.

In the instant matter, as all facts are silent and undisturbed at the lower tribunal, raising it now the fact which was never deliberated at the trial serves no any useful legal purpose at this stage. Worse of the story, the appellant being the claimant at the trial tribunal. Thus,I'm inclined to hold that the appellant's request for termination of proceedings on this ground came rather belatedly and serves no any useful legal purpose in the circumstances of the instant appeal.

On the second ground of appeal, the appellant's complaint is that the land officer was called during the visit of the locus in quo but had not testified earlier in court prior to his invitation at the locus in quo. It is my humble view that the trial procedure before the ward tribunal is not strictly regulated by the known legal procedures as outlined under the Civil Procedure Code or other known legal procedures (section 15 of the Ward Tribunals Act, cap 206, R.E 2019). As such, it is not bound bythe legal technicalities. It is not a legal requirement that he ought to have testified first at the trial tribunal, before testifying further at the locus in quo.

On the fifth ground, the appellant contended that the trial tribunal did not have any records after visiting the locus in quo and he cited the case of NIZAR (supra) to substantiate his submission. It is a trite law that the ward tribunal is not bound by technicalities (section 15 of the Ward Tribunals Act, cap 206). However, the issue to beconsidered whileat the locus in quo must be clear. There should have been a dragging issue on it. The fact that the trial tribunal didn't keep a record of what transpired during the visit at the locus in quo in the circumstances of this case didn't vitiate the tribunal proceedings as there is nothing useful obtained from the land officers in resolving the dispute at the trial tribunal. It is my humble view that the Ward Tribunal is not bound by rules of evidence or procedure in the conduct of its proceedings(section 15 of the Ward Tribunals Act, cap 206).Though it it was important and essential at this particular juncture to know what really transpired at the locus in quo after the parties had been there, the trial tribunal had this to say in consideration of what the land officers did at the field:

> *".....Wajumbewa Baraza la Kata la Nyamatare walisikiliza shauri hili pande zote mbili nakujiridhisha kwamba katika eneo la tukio, lakini waligonga mwamba baada ya kukosa*

alama za vigingi. Na badala yake wamekuja kufanya upimaji upya wakati kiwanja kilishapimwa na kina vielelezo vyake, yaani offer, hati na stakabadhi ya malipo ya eneo husika.....".

So, in essence though the land officers from Musoma Municipal Council were invited to address the trial tribunal on the issue of land boundaries on the disputed plot, they were not helpful on resolving the issue. Thus, the decisive point of the issue at the trial Tribunal was not from the testimony of the land officers but from the evidence of the parties themselves. On this the trial Tribunal remarked this way:

"....Na baada ya kujiridhisha, wajumbe wamepitia Ushahidi wa pande zote mbili, vikiwemo vielelezo vya mlalamikaji ambavyo vyote vimekidhi vigezo na pia upande wa pili kwa mlalamikiwa, hana hata kielelezo kimoja wapo ambacho kingemwezesha kupata utetezi katika shauri hili. Hivyo basi baada ya mapiti yohayo baraza limetoa uamuzi ufuatao ..... Ndugu Wilson Ruhumbika vigezo vyake havikukidhi mlalamikiwa kupata haki katika shauri hili na badala yake aondoe kilicho chake kumpisha Ndg Gunguli R. Malingo....."

As the testimony was not used by the trial tribunal in determining the decisive point, it as good as not being recorded. However, it is first appellate tribunal that considered the opinion of the Land Officer.

Nevertheless, considering the first appellate tribunal's record dated 17th December, 2020 on the visit to the locus in quo, the tribunal's record just establishes its findings, there is nothing stated/ reproduced as what was said by the Land Officer Sospeter Maiba. Unlike trials at Ward Tribunal, proceedings at DLHT are strictly regulated by law. There ought to have been a full and clear compliance with the law as stipulated in the case of **NIZAR M. H. v/s GULAMALI (1980) TLR 29** and **Avit Thadeus Massawe v/s Isdory Assega (Civil Appeal No. 6 of 2017).**

As the legal procedure at the visit to the locus in quo was not adhered/complied by the DLHT, its proceedings dated 17th December, 2020 is hereby expunged from the Court record and its resulting findings, orders and decision thereof are quashed and set aside. In its place, I order retrial of the first appellate tribunal proceedings from 10th December 2020 to make a strict compliance and adherence to the law while at the locus in quo and its proceedings be fully reflected. Thereafter, the trial Tribunal to compose a fresh judgment to determine

the issue of ownership of the two plots (Plot No. 222 and 224) between the parties to this matter or otherwise.

That said, the appeal is allowed to that extent only. No order as to costs.

It is so ordered.

DATED at MUSOMA this 24th day of August, 2021.

F. H. Mahimbali

JUDGE

24/08/2021