

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TABORA
LAND APPEAL NO. 16 OF 2019
(Originated from Land Application No.3 of 2018 Tabora
Land and Housing Tribunal)

HAMADI SHABANI KAGUNDA..... APPELLANT

VERSUS

MAULID RASHID.....RESPONDENT

JUDGMENT

Date of Last Order: 17/9/2021

Date of Delivery: 24/9/2021

AMOUR S. KHAMIS, J:

This is an appeal against the decision of the District Land and Housing Tribunal for Tabora in Application No. 3 of 2018 which struck out the appellant's application for want of jurisdiction.

Brief facts that led to this appeal is that Hamadi Shabani Kagunda, hereinafter referred to as the appellant, was the applicant in Land Application No.3 of 2018. He filed suit against the respondent, Maulid Rashid claiming for ownership of the farm/land in dispute.

In his written statement of defence the respondent raised preliminary objection on points of law that:-

- 1. The application at land is bad in law for being time barred for the land was early bought since 2000 and underutilization since then, the suit is opened in 2018 thus 17 years far.*
- 2. The land value is less than 3,000,000/= being bought at Tshs. 200,000/= hence out of pecuniary jurisdiction of this tribunal.*
- 3. The application is legally defective for non-joinder of necessary part(seller).*

Upon determination of the preliminary objections, the trial chairman overruled the first and third points of objection. However, he upheld the second objection and consequently, struck out the suit for want of pecuniary jurisdiction.

Dissatisfied with the Ruling of the District Land and Housing Tribunal, the appellant lodged this appeal. Basically, he is faulting the decision of the trial Tribunal for striking out the application on the ground of lack of pecuniary jurisdiction to entertain the matter while there is no record to support the same.

Pursuant to the order of this Court dated 28/7/2020, this appeal was argued by way of written submissions. I am grateful that, both parties fully complied with the schedule set by the Court.

At the hearing, the appellant was represented by Ms. Flavian Francis, learned advocate while the respondent was represented by Mr. Kelvin Kayaga, learned advocate.

In support of the ground of appeal, Ms. Flavian Francis contended that the trial tribunal was wrong to rule out that the application is incompetent basing on the respondent allegation

that he bought the suit in dispute at Tshs. 600,000/= and the appellant bought the suit land at Tshs. 200,000/= which make a total amount to be Tshs. 800,000/=.

Elaborating on this point, Ms. Flavian was of the view that a mere express cannot be taken as evidence to injure a justice of others. She also argued that there is no valuation report on the record to prove that the land in dispute is less than Tshs. 3,000,000/=.

She therefore, prayed for an order to allow this appeal and remit the matter before the trial tribunal to hear the application on merit as it was struck out without a reasonable ground.

In reply, Mr. Kelvin Kayaga, advocate for the respondent, strongly disputed the appellants submission. He argued that the appeal is incompetent for failure to attach a copy of drawn order appealed against. To support his submission he cited Section 41 of the Land Disputes Courts Act, cap 216 R.E. 2019 which requires the appellant to attach a copy of drawn order when filling the appeal.

Mr. Kelvin Kayaga also argued that the trial tribunal was right in holding that the application is incompetent as the value of the suit land was below the pecuniary jurisdiction of the tribunal by virtue of Section 15 of the Land Disputes Courts Act No. 2 of 2002.

He submitted that the trial Chairman relied on the pleadings as a whole upon undisputed fact that the suit land had been

purchased at Tshs. 200,000/= as per application filed by the appellant during trial.

He argued that the trial tribunal was proper to hold that the application is incompetent because the price upon which the land was bought was below the pecuniary jurisdiction of the tribunal. He moved the Court to dismiss this appeal for want of merits.

I have considered the submissions fostered by both parties, the ground of appeal together with entire record of this appeal. The apparent question for determination is whether the trial tribunal had pecuniary jurisdiction to entertain the matter that was before it.

I must admit that, the issue of jurisdiction is very fundamental. Before hearing and determination of a case, the Court has to be sure that, it is vested with requisite jurisdiction to entertain the matter.

In **FANUEL MANTIRI NG'UNDA V HERMAN MANTIRI NG'UNDA (1995) TLR 159**, it was held that it is risk for the Court to proceed with the trial of a case while assuming its jurisdiction.

In order to determine jurisdiction of the Court, a Court of law must look at the pleaded facts that may constitute a cause of action, the reliefs claimed and establish as to whether the Court has power to grant them and whether such reliefs correlate with the cause of action.

It is a mandatory requirement of the law that a pleader should include in his plaint a clause which show that the Court has jurisdiction to deal with the matter. This is for the purpose of

enabling the Court not only to determine the pecuniary jurisdiction but also for assessment of the Court fees.

Upon perusal of the record, I am satisfied that, the suit at hand is purely a land matter, and thus governed by both Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33 [R.E. 2002] and Section 15 (a) of the Land Disputes Courts Act, Cap. 216 [R.E 2002].

For the sake of clarity, I wish to quote, Order VII Rule 1 (i) of the Civil Procedure Code, (supra) which provides that:-

"The Complaint shall contain the following particulars: - (j) A statement of the value of the subject matter for the suit for the purposes of jurisdiction and of Court fees, so far as the case admits". [Emphasis is mine].

I have perused the application lodged by the appellant in the trial Tribunal and found that, there is a paragraph which specifically (paragraph 4 of the application) disclosed the value of the subject matter together with its geographical location.

According to paragraph 4 of the application filed at the trial tribunal, the estimated value of the subject matter was Tshs. 5,000,000/= which complies with the mandatory requirement of Order VII Rule 1 (j) of the Civil Procedure Code (supra) that requires a complaint to contain a statement on the monetary value of the subject matter.

Further, a look at the relief sought in the application included an order for declaration that the applicant was a lawful owner of

the land in dispute. Hence, reliefs sought are within the tribunal's power and actually correlate with the cause of action.

Basing on the above findings, I am not inclined to follow the line of reasoning adopted by the Chairman of the District Land and Housing Tribunal for Tabora when striking out the application for want of pecuniary jurisdiction.

I am holding so on personal satisfaction that the trial Chairman misdirected himself by relying in the purchase price of the land in dispute instead of relying on the pleaded facts and reliefs sought in the application before him.

I am also satisfied that there is no any supporting evidence on record to prove that the purchase price of the suit land was the actual value of the suit land when the matter was filed in the trial tribunal.

In my opinion, the value of the subject matter cannot be ascertained by mere speculation without support of a valuation report prepared by a registered valuer.

A mere allegation of the value based on the purchase price of the suit land bought in 2018 could not, in my view, be used to determine value of the subject matter or the pecuniary jurisdiction of the Court.

In the case of **JOHN MALOMBOLA V REMMY KWAYU, MISC. LAND APPEAL NO. 91 OF 2009, HIGH COURT LAND DIVISION** (Unreported), it was held that:

" The value of the land must be ascertained by a valuer taking into consideration the current market value of the land and its improvement at the time the suit was instituted".
[Emphasis is mine].

As already stated above, the estimated value of the suit land was pleaded in the application under Paragraph 4. Hence, the trial tribunal had jurisdiction to deal with the matter.

Furthermore, pursuant to **Section 15 of the Land Disputes Courts Act**, the pecuniary jurisdiction of the District Land and Housing Tribunal on matters relating to immovable properties is limited to those matters with the value that exceeds Tshs. Three Million Shillings (Tshs 3,000,000/=).

Therefore, the trial chairman misguided himself in striking out the application without appreciating that pleadings disclosed the estimated value of the suit land as Tshs. 5,000,000/= hence within the pecuniary jurisdiction of the District Land and Housing Tribunal.

In the upshot, I find merits in this appeal which is allowed. Consequently, I hereby order the matter be remitted to the trial tribunal for determination on merits before a different chairman and a new set of assessors.

Considering the circumstances found in this appeal, each party shall bear own costs.


AMOUR S. KHAMIS.

JUDGE

24/9/2021

ORDER:

Judgment delivered in chambers in presence of Ms. Flavia Francis learned advocate for the appellant and in absence of the respondent. Right of Appeal explained.




AMOUR S. KHAMIS

JUDGE

24/9/2021