

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOKA DISTRICT REGISTRY**

**AT BUKOKA**

**LAND APPEAL CASE NO. 18 OF 2021**

*(Arising from Original Civil Case No.30 of 2018 of Kasambya Ward Tribunal and from Appeal Case No. 17 of 2018 of District Land and Housing Tribunal for Kagera at Bukoba)*

**ANASTAZIUS TUSHABE..... APPELLANT**

**VERSUS**

**DAVID KAROLI.....RESPONDENT**

**JUDGMENT**

**16/09/2021 & 01/10/2021**

**NGIGWANA, J.**

This is the second appeal where the appellant one Anastazius Tushabe was not amused with the decision of the District Land and Housing Tribunal for Kagera at Bukoba (The appellate Tribunal). The Kasambya Ward Tribunal (The trial Tribunal) which tried the original Civil Case No. 30 of 2018 after hearing on the claim of crossing/overstepping the boundary of the appellant by the respondent concluded as quoted herein below: *"Kwa kuwa mtaro ulichimbwa bila kushirikisha Jirani hawezi kuhesabika kavuka mpaka.....Mlalamikaji alionyesha alama yake na mlalamikiwa alionyesha mbele ya mlalamikaji. Hatua kama kumi Mbele ya Mlalamikaji. Hatua hizo zigawanywe katikati maana hakuna Alama lasmi".*

The respondent one David Karoli was not blessed by the trial tribunal decision and therefore successfully appealed to the appellate tribunal. At the appellate tribunal, the grounds which were tabled for determination were as follows: **One**, that the trial tribunal determined the suit without first assuring its pecuniary jurisdiction. **Second**, that the suit before the trial tribunal was incompetent for want of prescribing the location of the suit land hence the order thereto was uncertain and not executable. **Three**, that the respondent tendered the contracting evidence in respect of the way he owned the suitland. **Four**, the appellant as a neighbour to the Suitland was not invited to be a witness at the time when respondent was purporting to purchase a suit land. **Five**, the decision was delivered against the weight of evidence.

The appellate tribunal exercising its appellate jurisdiction re-evaluated the evidence afresh and finally found the appeal before it to be meritorious. It allowed all the grounds and therefore quashed proceedings and set aside the judgment of Kasambya Ward Tribunal.

The appellant was undaunted and thus has approached this temple of justice coining with five grounds namely: **One**, the appellate tribunal erred by entertaining the case and reaching into decision that the trial ward tribunal had no jurisdiction to entertain the case while it had. **Two**, the appellate tribunal erred by entertaining the case and reached into the decision that, there was uncertainty on the suit land location while there was certainty on the land location. **Three**, the appellate tribunal erred by entertaining the case and reaching into the decision that, the respondent was not involved into sale of land while the claimed was taken by events. **Four**, the appellate erred by

entertaining a case and reaching into decision while there is uncertainty on how the respondent comes into ownership of the land in dispute. **Five**, the appellate tribunal erred in law and facts by reaching decision against the weight of evidence.

The appellant was represented by Advocate Jovin while the respondent was represented by Advocate Chamani.

On the first ground, Advocate Jovin had the view that the ward tribunal had pecuniary jurisdiction as the disputed land was valued to 100,000 and the Ward Tribunal relied on that amount to ascertain jurisdiction therefore it was an error for the tribunal to have ruled that the value of the subject matter exceeded 3,000,000. That the pecuniary jurisdiction of the Ward tribunal is governed with section 15 of the District Land Courts Act, cap 216 R.E 2019.

With respect to the second ground, the appellant's counsel submitted that, reading the judgment of the appellate tribunal, used Regulation 3 of the Land Dispute Courts Act to rule that boundaries were not specified. That it was wrong because the said rule is not applicable in the Ward Tribunal. That for the whole time of hearing, the appellate court, on page 1 of the appellate tribunal described the boundaries of the suit land. He added that even the sale agreement specified the boundary of the Suitland.

Advocate Jovin withdrew ground number three and went on submitting on the fourth and fifth grounds collectively that the respondent did not explain how he acquired the suit land and therefore concluded that the appellant had

strong evidence compared to the respondent and that it was wrong to have declared the respondent the legal owner of suit land.

In reply, Advocate Chamani explained that the suit land was uncertain and that the same issue was dealt before the appellate tribunal and was reflected in the case of "Ndagala" cited in the appellate tribunal and therefore he maintained his stance that the location was uncertain. On the argument that the respondent did not explain how he acquired the land, he reacted that the burden to prove the case was due to the appellant. With regard to the first ground of appeal, Mr. Chamani responded that their reaction is on the 1<sup>st</sup> paragraph of the reply to the petition of appeal.

I will determine each ground of appeal in seriatim.

With regards to the first ground of pecuniary jurisdiction, it was also raised at the appellate tribunal. The appellate tribunal refused to accept value of 500,000Tsh upon which the suit land was purchased in 2005 basing on the ground that it cannot be used to ascertain pecuniary jurisdiction of the trial tribunal as it was not valued at the current market price as land always appreciate. It was therefore a finding of the appellate tribunal that the value was uncertain and therefore trial tribunal lacked jurisdiction. I think this ground should not detain me. The dispute between parties does not revolve on ownership of land rather overstepping on the boundaries as the appellant had sued the respondent for digging the trench (mtaro) as a sign of demarcating the boundaries between them and thus believed the respondent overstepped and encroached his land.(see pg 1 of the trial tribunal

proceedings) *"waliokuwa wanalima walimwambia kuwa David ameleta Trekta kulima na kuzunguka eneo lake, lakini na kichuguu amekirudisha kwake"*.

It was not in dispute that when the appellant bought his land in 2005 with the purchase price of 500,000 and he found the respondent on his neighbouring land. I paused to ask, that if the respondent was sued to have encroached about 10 steps to the land of the appellant which was purchased with the price of 500,000tsh, how comes the appellant claims the trial tribunal to have lacked jurisdiction on the issue of encroaching the boundary which is even below the value of the purchased land given the fact that the pecuniary jurisdiction of the ward tribunal is below 3,000,000?. The issue of the trial tribunal lacking jurisdiction is totally misplaced and unfounded. Besides, what is surprising is that the appellant himself was the one who referred the matter to the ward tribunal and is the one who mentioned to have bought the alleged to have been encroached land worth 500,000. Worst still neither of them at the trial tribunal raised and faulted the trial tribunal with the issue of pecuniary jurisdiction but both the respondent and appellant came to raise it at the appellate tribunal and High Court respectively, which I view it as an afterthought.

The court of appeal has now resolved the long disturbing controversy concerning pecuniary jurisdiction of ward tribunal that if the issue of pecuniary jurisdiction is not raised at the earliest opportunity time at the Ward Tribunal, and later being raised at the appellate stage will amount to afterthought and therefore the appellate court ought to dismiss it. See the

case of **Sospeter Kahindi vrs Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT (Unreported) which I quote part of its holding for sake of clarity:

*"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."*

The first ground of appeal bounces.

With regard to the second issue which the appellant faults the appellate tribunal to have erred in holding that the size, location and boundary of the Suitland were not described at the trial tribunal. The appellate tribunal agreed with the referred authority by the respondent's counsel at the appellate tribunal of **Daniel Dagala Kanuda (As administrator of the Estate of the late Mbalu Kushaha Bulude) vs Masaka Ibeho and 4 others**, Land Appeal, No. 26 of 2015 HCT at Tabora (Unreported), which interpreted regulation 3(2) (b) of GN No.174 of 2003 and I quote:

*"The description of the disputed land in the matter at hand was thus not sufficient enough for identifying it so that the tribunal could effectively resolve the controversy between the parties. The matter was thus incompetent before the tribunal for the uncertainty of the subject matter. Courts of law including the tribunal do not have the jurisdiction to entertain incompetent matters i.e disputes on uncertain subject matter."*

Advocate Jovin, the appellant's counsel argued that regulation 3 (2) of the GN. No. 174 (Supra) referred by the respondent do not apply pin the ward tribunal. I am alive that regulation 3(2) which requires while initiating the dispute one should file a prescribing form disclosing the boundary, size and location of the land in dispute the requirement of filing and replying pleadings which are not a requirement to the Ward Tribunal. Nonetheless, the parties which present their complaints orally and reply thereon together with evidences from their witness are bound to explain to the trial tribunal the size, boundary and location of the land in dispute so that any tribunal seized with the matter clearly determines the rights of parties by passing executable decree. Consistently, the trial tribunal has also a duty to investigate the boundary, size in measurements and location including visiting a *locus in quo* so that it ultimately gives its decision which will be easily executed.

Also, in the case of **Jeneroza Prudence v. Matungwa Salvatory**, Land Case appeal No. 25 of 2020 this court citing the case of **Said Hassan Shehoza V. The Chairperson CCM Branch and another**, Land Appeal No. 147 of 2019 held inter alia that:

*"Having the same principle in mind, it is the finding of this court that as per the available evidence on encroachment, the contradictions on the size of the land and the boundaries therein, it was a fit case for the trial tribunal to exercise its discretion and make a visit the locus in quo in order to ascertain the boundaries in dispute and the size of the land. I am convinced that by doing so, the tribunal would have made a more informed decision on the*

*issue of encroachment. Failure to do so might have made the tribunal reach into a wrong finding."*

Again, in the case of **Rwanganilo Village Council and 21 Others V. Joeseeph Rwakashenyi**, Land Case appeal No. 74 of 2018 HCT at Bukoba (unreported) which cited with approval of the already referred case of **Daniel Dagala Kinogi (As administrator of the Estate of the late Mbalu Kushaha Bulude) V. Masaka Ibeho and 4 Others** (Supra), It was held that:-

*".....I highly subscribe to the view and findings because it may be grave injustice and dangerous to decide a case which its size and location is unknown..."*

I have perused keenly to the entire proceedings of the trial tribunal and finally have not been able to see where the trial tribunal was told the location in terms of hamlet and village of the appellant's land in dispute which was alleged to have been encroached. It was neither testified by witnesses nor featured on the sale agreement. Besides, the boundaries were not even disclosed in the sale agreement of the appellant to see if the trespasser has over stepped and to what extent in terms of size in measurements. It is not even clear if there was demarcation separating the neighboring parties and at what distance so that the trial tribunal becomes easier to give its orders in terms of measurement which will eventually aid on execution to be carried on, given the fact that even the appellant when purchased the land alleged to have encroached did not involve the respondent as his neighbor as rightly observed by the appellate tribunal. The trial tribunal confirmed to have not

found any demarcation separating the parties and therefore decided to assume its own boundaries on the suit land which was a dangerous move in litigation and caused a grave injustice to all parties. In my view, the trial tribunal cannot be said to have determined the controversy properly.

On this ground, I shake hands with the appellant tribunal that there was no description on the boundary and location of the suit land hence the trial tribunal determined an incompetent matter which resulted to inexecutable decision and therefor a nullity.

To make it clearer, in the first ground of appeal, I faulted the appellant tribunal by deciding that the trial tribunal had no pecuniary jurisdiction to try the matter while it had save that in the second ground I have concurred with the appellate tribunal that the matter was thus incompetent before the tribunal for the uncertainty of the subject matter. The third ground was withdrawn by the appellant's counsel. Since the second ground alone touches on competence of trial court to determine the matter suffices to put this matter at rest. Therefore, determining the fourth and fifth grounds will not save any purpose.

The net effect is to dismiss an appeal to the extent explained and to upheld the order of quashing the judgment and proceedings of the trial tribunal for having tried the incompetent matter and revert the parties to their status quo and direct parties that whoever wishes to commence the matter to do so to the tribunal with competent jurisdiction.

Finally, this appeal lacks merit and I therefore dismiss it to the extent a fore explained. I refrain from giving order as to costs due to circumstance of this case.

Order accordingly.



E. L. NGIGWANA  
JUDGE  
01.10.2021

Judgment delivered this 1<sup>st</sup> day of October, 2021 in the presence of the respondent in person, Mr. E. M. Kamaleki, Judges Law Assistant, Gozbert Rugaika B/C, but in the absence of the Appellant.



E.L. NGIGWANA  
JUDGE  
01.10.2021