

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
BUKOB A DISTRICT REGISTRY
AT BUKOB A**

MISC. LAND CASE APPEAL NO. 53 OF 2021

*(Arising from Application No.43/2018 of District Land and Housing Tribunal for Kagera at Bukoba
and from original Civil land case No.36 of 2018)*

SANTHO FREDERICK..... APPELLANT

VERSUS

GRACE.W. MTABAZI.....RESPONDENT

JUDGMENT

16/09/2021 &30/09/2021

NGIGWANA, J.

Being dissatisfied with the judgment and decree of Bukoba District Land and Housing Tribunal (DLHT) "Henceforth the appellate tribunal" delivered on 22nd February, 2019 exercising its appellate powers over Nyanga Ward Tribunal, the appellant registered an appeal to this court with three grounds as quoted verbatim hereunder:

- 1. THAT, apart from the assessor's views on the improper constitution of the trial tribunal and its legal effect the learned chairman grossly erred in law by upholding the judgment of the trial tribunal instead of quashing and setting it aside grounding on the decision of the court of appeal which is totally distinguishable.*

2. THAT, the learned Chairman failed even to address himself on the issue of competence of the respondent who had no locus standi to file the dispute having not possessed the letters of administration of the estate of his late father, the alleged owner of the suit land.

3. THAT, the learned Chairman immensely misdirected himself in dismissing the point of the pecuniary jurisdiction regarding the undisputed facts of the purchase price of the suit land at the tune of Tshs.25,000,000 with reasons that there were no records at the trial tribunal.

The appellant prayed the appeal be allowed with costs with an order of reversing the concurrent judgments made by the lower tribunals and order to quash and set aside the proceedings and judgment thereof.

At the hearing, the appellant was represented by advocate Lameck John Elasto while the respondent remained peddling on her own canoe.

On the first ground the appellant's counsel submitted that the members who sat at the ward tribunal were six (6) contrary to section 4 (3) of the Ward Tribunals Act Cap 206 R.E 2002 which stipulates that the corum shall not be more than four (4) members. He added that even section 11 of the Land Courts Disputes Act, Cap 216 R. E 2019 provides that the members should not be more than four (4). That since the trial tribunal was not properly constituted, the appellate tribunal ought to have quashed the proceedings of the trial tribunal. He referred this court the case of **Adelina Koku Anifa and another vrs Byaruhanga Alex**, Civil Appeal No.46 of 2019 especially page 9.

The second ground which was argued by the appellant's counsel is that the respondent was not administrator of the estate of her father contrary to the dictate of paragraph 6 of the 5th Schedule of the MCA Cap 11 that the one who can sue or be sued is the administrator of the deceased's estate. He referred this court to the case of **Mohamed Hassan versus Mayesa Mzee and Mwanahawa Mzee** (1994) TLR 225, the court stated that upon grant of the letters of administration the grantee thereof becomes fully mandated to deal with the estate as free as he can.

As regards to the third ground, Mr. Lameck submitted that the trial tribunal had no pecuniary jurisdiction to entertain the matter. That according to section 15 of Land Disputes Courts Act, Cap 216 (R. E 2019) the pecuniary jurisdiction of the ward tribunal is not more than 3,000,000. That the appellant testified to have bought the disputed land at Tshs. 25,000,000. That it was the duty of the trial tribunal to ascertain whether it had jurisdiction or not before entertaining the matter. He referred the case of **Samwel Martine Ngenda versus Herman Martine Ngenda and 3 others**(1995)TLR 155 where it was held that the issue of jurisdiction is basic and so fundamental. Mr. Lameck submitted that at the ward tribunal the sale agreement was not tendered but under section 34 (1)(b) of the Land Disputes Courts Act Cap. 216 R:E 2019 they tendered it at the appellate tribunal and the tribunal saw that the value of the subject matter was Tshs. 25,000,000/=but the chairman never considered the point of jurisdiction.

Invited for the reply, the respondent being a lay person made her submission by conceding that the members were more than four. That he

had no active role to reduce such a number and that all the six members visited the locus in quo.

With regard to the issue of administration of estate conceded that the administrator of estate of her father is one Deogratius Rwabyo who resides in Dar es salaam because she is leaving in Kagera therefore it was possible for her to institute the case than the administrator who is far from Kagera.

Concerning the last ground on the issue of pecuniary jurisdiction, she responded that the land encroached is valued at Tshs. 2,000,000. That they did not sell the whole land to the appellant. She finally prayed the appeal to be dismissed for want of merit.

In rejoinder, Advocate Lameck submitted that the respondent admitted that the members were six (6) and the administrator is Deogratias Rwabyo. That the respondent said that the land in dispute was valued at 2,000,000 but the trial tribunal's proceedings are silent.

I will determine one ground after another as they appear in the petition of appeal. Starting with the first ground of appeal which Mr. Lameck has faulted the decision of the Ward Tribunal to be improperly constituted. The appellant's counsel submits that the members were six (6) instead of four (4). The respondent has conceded that they were truly six (6). Now the issue is how many members are required to sit at the Ward Tribunal? I have not got any trouble to determine this. Section 4 (3) of Ward Tribunals Act, Cap 206 and section 11 of Land Disputes Courts Act, Cap 216 both provisions relied by Advocate Lameck, have expressed almost similar requirement on the members required to constitute the ward tribunal that

the members shall not be less than four nor more than eight. Both provisions of different statutes providing similar requirement, I am obliged to quote the wording of one of the provisions that is Section 11 of LDCA, Cap 216 viz:

"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by Ward Committee as provided for under section 4 of Ward Tribunals Act "(the emphasize is mine)

The dictate of the above quoted provision and as well as of section 4 (3) of Cap. 206 of WTA, (supra) sets the minimum of four (4) members and maximum of eight (8) members. This is what was interpreted by the court of appeal of Tanzania in **Adelina Koku Anifa and another vrs Byaruhanga Alex** (supra) which was misconceived and wrongly interpreted by the appellant's counsel. Since the members who sat at the trial Ward Tribunal were six (6), the tribunal was therefore properly constituted. The ground therefore lacks merit and it is hereby dismissed.

Coming to the second ground which the appellant's counsel has thrown the blame to the appellate tribunal that the chairman failed to address himself on the issue of the competence of the respondent who *had no locus stand* to file the dispute having not possessed the letters of administration of the estate of his late father, the alleged owner of the suit land. Through scrutiny of this court, this is the new ground which was not raised at the appellate tribunal. The appellant counsel in this appeal was the one who represented the respondent/the appellant at the appellate tribunal. He is

also the one who drew and filed a petition of appeal in the appellate tribunal but all along, he did not raise that ground of the respondent not being administratrix of the estate of her father. Courts have been declining to entertain new grounds which were not raised at the first appellate court for want of jurisdiction to determine them and ultimately striking out the same. See **Abdul Athuman Vs R** (2004) T.L.R 151, **Samwel Sawe V** Criminal Appeal No.135 of 2004 CAT, at Arusha (Unreported).

I am alive that the raised issue touches on the point of law as it questions the *locus standi* of the respondent to sue for protecting of the land interests of her late father (the deceased). This is per paragraph 6 of the 5th Schedule of the MCA Cap. 11 which provides that the one who can sue or be sued is the administrator of the deceased as relied by the appellant's counsel and also had referred this court in the case of **Mohamed Hassan versus Mayesa Mzee and Mwanahawa Mzee**(supra).

However, with the prevailing circumstances to this case, where the respondent had testified at the trial Tribunal that the land in dispute belongs to her and that she had acquired it from her late father before his demise and she said, her late father had shown the land and its boundaries to her during his life time, it is difficult at this appellate stage to adjudicate on the issue whether the land belongs to the respondent's father or otherwise the issue which was neither objected by the appellant at the trial tribunal nor raised as a ground at the appellate tribunal.

I quote part of the trial tribunal judgment, on first page, reads: "*Mnamo tarehe 3/1/2018 ndugu Grace Mtabuzi alikuja kwenye baraza la usuruwishi*

la kata kuwa anamlalamikia ndugu Santho Fredrick kwa kunichukulia eneo langu tulioachiwa na baba yetu.....Mipaka ya shamba langu najua vizuri kwa sababu baba yangu mzazi alinionesha kabla hajafa yaani alinionesha wakati wa uhai wake.”

The above quoted testimony reveal that the respondent sued on what she claimed to be her own property. Hence the allegation that the respondent is not administratrix of the estate of her late father is misplaced and cannot arise here rather it remains as afterthought. But I am also aware that at the hearing of appeal in this court, the lay respondent admitted that the administrator of his late father is called Deogratias Rwabyo who resides in Dar es salaam, that it was possible for her to institute the case as she resides in Kagera. That admission to have been an administrator of her late father, *ipso facto* cannot be interpreted by this court to mean that the land in dispute really belongs to the deceased, the respondent's father or whether the suit land forms part of the estate to be administered by the said deceased's administrator, regard being heard that the respondent had testified at the trial tribunal without being challenged that she acquired the land in dispute from her father before his demise. After all, such layperson admission cannot be accepted by this court as she may have not even been understanding legally what administrator means and since no letters of administration tendered in court on that effect, this court cannot rely on the mere words of the lay person. Finally, this new raised issue or ground has no merit and squarely does not qualify as point of law to be so called. The same is hereby dismissed.

With regards to the last ground, this court appreciates that the issue of pecuniary jurisdiction is so fundamental for any court to ascertain before assuming its role of adjudication otherwise what is done without jurisdiction is a nullity. The case of **Samwel Martine Ngenda versus Herman Martine Ngenda and 3 Others** as rightly referred by Mr. Lameck sufficiently underscores the point. The appellant's counsel submitted that since the appellant tendered the sale agreement of the suit land at the appellate court as additional evidence which was valued at Tshs. 25,000,000 and which was not tendered at the trial Tribunal therefore the appellate Tribunal erred to have not quashed the proceedings of the trial tribunal as it determined the matter which was above Tshs. 3,000,000 contrary to section 15 of Cap. 216 (Supra). The respondent responded that the appellant did not encroach the whole land that he encroached part of it which she is disputing and which is valued at Tshs. 2,000,0000. This ground will not detain me. The appellant's counsel has admitted that the issue of pecuniary jurisdiction was not raised at the trial tribunal.

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 **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 third and last ground of appeal also fails.

In the upshot, I find no any sentiment of merit in this appeal. The trial Ward Tribunal and Appellate Tribunal judgments are upheld and consequently the appeal is dismissed with costs.

Order Accordingly.



E.L. NGIGWANA

JUDGE

30.09.2021

Judgment delivered this 30th day of September, 2021 in the presence of Ms. Erieth Barnabas, learned Advocate for the Appellant, the respondent in person, Mr. E. M. Kamaleki, Judges' Law Assistant and Mr. G. Rugaika, B/C.



E.L. NGIGWANA

JUDGE

30.09.2021