

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS LAND APPEAL NO. 5 OF 2021

**(Arising from the District Land and Housing Tribunal for Mtwara at
Mtwara in Land Appeal No. 52 of 2019, Originating from Maundo Ward
Tribunal in Land Case No.52 of 2018)**

JUMA UZI ABDALLAH.....APPELLANT

VERSUS

LUKIA DADI SULUNGI.....RESPONDENT

JUDGMENT

2nd Nov. & 7th Dec., 2021

DYANSOBERA, J.:

The appellant herein was the second respondent at Maundo Ward Tribunal (the trial Tribunal). In Land Application No. 52 of 2018 the respondent sued jointly Salumu Akili Sulungi and the appellant before the trial Tribunal for illegal sale and purchase of the suit land valued Tshs.2,500,000/=. In that matter the respondent claimed that in 1990 she bought the suit land and handed it over to her father for supervision since she was residing in Dar es Salaam. But after a number of years, respondent decided to return to the village where she found the suit land sold to the appellant by Salumu Akili Sulungi. Seeing that, she

decided to lodge his land complaint at the trial Tribunal. At the beginning of the trial the appellant and Salumu Akili Sulungi appeared. However, in the later stages of the trial they decided not to attend the hearing. The appellant lodged a letter claiming to have no confidence with the trial Tribunal as the result the hearing proceeded ex parte. After closing the hearing, the trial Tribunal composed its decision and rendered it in favour of the respondent. Aggrieved, the appellant lodged his appeal before the District Land and Housing Tribunal for Mtwara at Mtwara vide Land Appeal No.54 of 2019 whereby he fronted four grounds of appeal. After the hearing, the appellate Tribunal decided in favour of the respondent by endorsing the decision of the Maundo Ward Tribunal which declared the respondent the lawful owner of the suit farm.

After that decision, the appellant complied with some of the directives found in the judgment of the appellate Tribunal. However, on 9.4.2020 the appellant wrote a letter to Maundo Ward Tribunal whereby he had two prayers: One, extension of time to file an application for setting aside ex parte judgment in Land Case No.52 of 2018. Two, to set aside the ex parte decision of the Maundo Ward Tribunal in Land Case No.52 of 2018. It is on record that on 20.4.2020 the trial Tribunal made its decision following the appellant's prayers. It granted the first prayer on the extension of time for setting aside ex parte decision and directed the appellant that he will be notified for the date of hearing his application to set aside ex parte decision of Land Case No.52 of 2018. Before

the trial Tribunal scheduled the hearing date for setting exparte judgment, it received a letter from the office of the District Executive Director of Tandahimba directing the trial Tribunal to stop the hearing of the application for setting aside its exparte decision in Land Case No.52 of 2018. The office of District Executive Director of Tandahimba directed the appellant to file an appeal to this court against the judgment of the appellate Tribunal. This move prompted the Maundo Ward Tribunal to write a letter to the District Land and Housing Tribunal for Mtwara for clarification following the letter it had received from the office of DED of Tandahimba. Though the appellate Tribunal received the letter on 4.5.2020, it did not reply.

In view of that interference from the office of the District Executive of Tandahimba, the appellant has lodged this appeal comprising four grounds of complaints which are as follows: -

1. That both the trial tribunal and 1st Appellate tribunal erred in law and fact by proceeding on hearing ex parte without affording the right to be heard to the appellant.
2. That both the 1st appellate Tribunal and the trial Tribunal erred both in law and fact by lodging the issue of jurisdiction of the trial Tribunal on trying the matter.
3. That the appellate Tribunal erred both in law and fact by not affording the right to be heard to the appellant.

4. That both the appellate and trial tribunal erred in law and fact by entertaining an application and appeal which was tainted with irregularities.

When this appeal came on for hearing on 2.11.2021 both parties appeared in person and unrepresented. As to the appellant, submitted that he filed four grounds of appeal. He also submitted that he has filed his rejoinder after he received the reply from the respondent.

The respondent submitted that she responded in writing and had nothing to add.

On my part, without labouring much on the grounds of appeal which are akin to those dealt by the appellate Tribunal, I find no need of being further detained. After a careful evaluation of the proceedings of the lower Tribunals, I am of the considered view that the first appellate Tribunal correctly determined the grounds of appeal and that is why the appellant decided to go back to trial Tribunal and lodged his application on two prayers for extension of time for filing an application for setting aside exparte decision in Land Case No.52 of 2018 and second prayer was exparte decision in Land Case No.52 of 2018. Very wisely, the trial Tribunal granted the prayers by the appellant. But surprisingly, the appellant left the reliefs he obtained and decided to come to this court against the decision of the appellate Tribunal in Land Case Appeal No. 54 of 2019.

As to what was done by the office of District Executive Director of Tandahimba was purely usurping the jurisdiction of the trial Tribunal and interference with the independence of the Tribunals. This court as supervisor of the Tribunals in the country, abhor the conduct exhibited by the District Executive Director of Tandahimba to the highest degree. The District Executive Directors is reminded that the cherished principle of separation of powers in our country should be observed and maintained.

With respect to the appellant's complaint that he was denied of the right to be heard, it is trite that the law of this country prohibits the condemnation of a person without his being given an opportunity to be heard. If, however, the person is given such an opportunity and does not make use of it, he cannot be heard to complain that he was condemned unheard. This is so because the right does not take away the power of the decision –maker to hear the matter ex-parte when a party duly notified of the hearing elects not to take a part in it or without good cause absents himself.

In the present matter, the appellant is to blame for his absenting himself.

In the second ground of appeal, the appellant is complaining that both the 1st appellate Tribunal and the trial Tribunal erred both in law and fact by ignoring the issue of jurisdiction of the trial Tribunal on trying the matter.

Section 15 of the District Land Disputes Courts Act [CAP 216 R.E. 2019] provides: -

Notwithstanding the provisions of Section 10 of the Ward Tribunal Act, the jurisdiction shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings”

This court has been insisting on trial Tribunal’s record to reflect the value of the suit farm or property. A clear example is the case of **Alli Kapalana vs. Omari Ligomba and 2 others** (supra) at page 4 and 5 where she observed that:

“First and foremost, the record of the proceedings did not reflect as to whether there was value approximation exercise done to determine the jurisdiction. So, if that was a yard stick as claimed record should have indicated the value of the land in the matter pending before it. And that would have determined the jurisdiction.

In the instant case, the record clearly indicates that the suit land had a value of Tshs. 2,500,000/=. Since the value of the suit land was within the legal jurisdiction of the trial Tribunal, the appellant’s complaint in the second ground of appeal has no basis.

In the light of the above observation, I am of the settled view that the appellant should take a route which he had opted before was misdirected by the office of District Executive Director of Tandahimba.

For the reasons stated above, I find the appeal unmeritorious and dismiss it with no order as to costs.

It is so ordered.




W.P. Dyansobera

Judge

7.12.2021

This judgment is delivered at Mtwara under my hand and the seal of this Court on this 7th day of December, 2021 in the presence of both parties but unrepresented.




W.P. Dyansobera

Judge

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