

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY AT MUSOMA

AT MUSOMA

MISC. LAND APPEAL NO 105 OF 2021

(From the decision of the District Land and Housing Tribunal for

Mara at Musoma in the application No 34 of 2021)

ELIAS M. SAMO APPELLANT

VERSUS

THE REGISTERED TRUSTEE OF

PENTECOSTAL EVANGELISTIC

FELLOWSHIP OF AFRICA (PEFA)..... RESPONDENT

RULING

21st and 29th March, 2022

F. H. MAHIMBALI, J.:

The appellant had first claimed to have filed a similar suit before Bunda District Court on various claims which he subsequently filed the same before the DLHT of Mara for Musoma. Both, the District Court of Bunda and DLHT of Mara– Musoma at different times dismissed the appellant’s claims on the basis of jurisdiction.

The appellant’s claims before the DLHT of Mara – Musoma according to record were:

- i. The Honourable Tribunal be pleased to declare that the Respondent's church is unlawfully built on residential area not fit to conduct church services.*
- ii. Stop order against church services within the residential area.*
- iii. Compensation of general damages to the applicant at a tune of TZS 3,500,000/=*
- iv. Order of rectification of the roof of her house to prevent rain from destroying applicant's foundation.*

After filing the said case at the DLHT, the respondent raised a preliminary objection on two points: firstly, the application does not disclose cause of action against the respondent and secondly, as the appellant's claims are essentially based on tort of nuisance, the DLHT lacked jurisdiction as it is not a claim on land matter.

Upon hearing of the preliminary objection, the DLHT ruled that as the application is centred on tort of nuisance, it had no jurisdiction to handle the same. The appellant has been aggrieved by the said decision, thus the basis of this appeal based on four grounds of appeal, namely:

- 1. That, trial chairman erred in law in delivering its ruling without requiring the assessors to give their opinion and without giving reference to assessor's opinion in the Ruling offending section 23 (1) (2) of the land disputes courts Act Cap. 216 (R. E. 2002)*

2. *That, trial chairman in ordering the appellant to file the case before normal court failed to note and to appreciate that the appellant filed the same Civil Case No 17 of 2020 of Bunda District Court and the court ruled out that it had no jurisdiction to try the case and ordered the case to be filed at land court. (True copy of judgment appended to form part of appeal).*
3. *That, trial chairman erred in law to order the appellant to file the case before normal court with costs without looking circumstances of the case while in fact it was the respondent who caused the matter to be filed at land court when he raised objection before District Court Bunda Civil Case No. 17/2020 that the court had no jurisdiction to try the case under section 32 (i) (a) (b) of the courts land disputed settlement Act. 2002.*
4. *That, trial chairman erred in law for failing to heed that under the circumstances of the case, costs of the case to follow final determination of the case.*

During the hearing of the appeal, the appellant appeared in person and fended for himself whereas the respondent was represented by Mr. Emmanuel Paul Mngárwe, learned advocate.

In arguing his appeal, he first prayed that his grounds of appeal be adopted to form part of his submission. He added that the appeal be allowed with costs as he is of the view that there is a dispute over jurisdiction between the DLHT and District Court of Bunda as which

Court then should preside the matter as each one denies jurisdiction. He wondered then, where should he file his case as each court denies jurisdiction.

On the other hand, Mr. Emmanuel Paul Mang'arwe learned advocate resisted the appeal. With the first ground of appeal, he submitted that what was before the DLHT was preliminary objection. That as per section 23 (1) and (2) of the LDCA, tribunal assessors are involved where there is hearing of the case or appeal on merit. As it was hearing on preliminary objection, the presence of assessors was not necessary.

On ground two, he submitted that the DLHT was right in reaching that decision. If the appellant was dissatisfied by the verdict of Bunda District Court on issue of jurisdiction, the appropriate remedy was to appeal against it to High Court. Thus, it was not proper to file the same at DLHT.

On ground no 3, he submitted that it was misconceived. Costs are normally awarded to the winning party and not to the losing party. So long as his case was dismissed for lack of jurisdiction, then costs followed the event. He added that since the decision of Bunda District

Court was not final, the appellant could have challenged the same to High court as he is doing it now against the decision of DLHT. All in all, it was his considered view that this appeal is out of place and costs be awarded.

On ground number four, he reiterated his submission in ground no.3 that the DLHT was justified to order costs of the case. On that basis he insisted that this appeal be dismissed with costs.

In his rejoinder submission, the appellant reiterated his submission in chief and argued that he is now at dilemma as which court is the proper court to deal with his matter in the circumstances of this case where both DLHT and Bunda District Court denies jurisdiction, each throwing a ball to the other. He thus, prayed for the High Court's guidance.

In digest to the above submissions, what is supposed to be responded now is whether the appeal is meritorious.

In the first ground of appeal, the concern is non – involvement of tribunal assessors at the hearing of the said suit at the DLHT. The issue here is whether the DLHT was properly constituted. Mr. Emmanuel Paul Mangárwe is of the view that as the DLHT was dealing with a

preliminary objection, then involvement of the tribunal assessors was not necessary. In getting a clear picture, it is better that Section 23(2) and (3) of the LDCA is revisited. The same provides as hereunder:

(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the judgment.

(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence.

However, under Regulation 22 of GN 174 of 2003 - The Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides special power of the Chairman which shall powers to determine:

- a) Preliminary objections based on points of laws;
- b) Applications for execution of orders and decrees
- c) Objections arising out of execution of orders and decrees

d) Interlocutory applications.

Considering this, it is clear that the DLHT shall be duly constituted when held by a Chairman and two assessors when hearing the case and before giving judgment. The composition in any way does not apply when there is a matter based purely on a point of law, issues of execution applications or interlocutory applications in which as per Regulation 22 is exclusively vested to the Chairman as his special power. That said, ground number one is devoid of merit, the same is dismissed.

On ground number two, the issue for determination is whether the DLHT had jurisdiction to determine the matter as filed on the prayers outlined above. The powers of the DLHT are not conferred by parties but statutorily defined. Section 33 of the LDCA, defines the jurisdiction of the DLHT on proceedings under the Land Act, the Village Land Act, the Customary leasehold, rent issues, land tenures and all other proceedings relating to land under any written law in respect of which is conferred by any such law.

According to the nature of the reliefs sought by the appellant at the DLHT, he was seeking for the following orders:

- i. Declaration that the Respondent's church is unlawfully built on residential area not fit to conduct church services.*
- ii. Stop order against church services within the residential area.*
- iii. Compensation of general damages to the applicant at a tune of TZS 3,500,000/=*
- iv. Order of rectification of the roof of her house to prevent rain from destroying applicant's foundation.*

Save for the fourth relief, the rest of the reliefs sought seem not to be in the jurisdiction of the DLHT to grant. In anyway, the DLHT cannot in law issue an order against the conduct of church services just because it is connected to land and built in residential areas. If this order is to be granted, then it is the domain of ordinary courts as clearly ruled by the DLHT. Similarly, the DLHT cannot give stop order against the conduct of church services simply because it is from that building and chaotic to the appellant. Neither has DLHT having powers of ordering general compensation to the party on tortious damage. This is purely a domain of ordinary court. That said, this ground of appeal is equally devoid of merit.

In the third ground of appeal, the issue is whether the DLHT had rightly ruled that the appellant's suit was supposed to be filed at normal

court. In consideration of the facts of the case and the prayers in the plaint, and also considering the response to grounds number one and two above, it is clear that the suit filed at the DLHT was not the land dispute for it to be determined legally. The appropriate court for sure was an ordinary court and not land court as preferred.

As to the fourth ground, the issue for consideration was whether the DLHT was justified to award costs of the case in the circumstances of this case. Be it known that upon determination of any matter before the Court of law, a winning party is entitled to costs unless the trial judge, magistrate or chairperson orders otherwise (see section 30 of CPC, Cap 33 R. E. 2019). In the current matter, as the appellant's case was wrongly instituted at the DLHT, he was rightly condemned to pay costs as per law.

As he is in dilemma now which court is the appropriate to determine his matter as both courts (Bunda District Court and DLHT for Mara), this Court is not in a proper position to determine the same as it has not been presented with a matter which was filed at Bunda District Court. Nevertheless, he is at liberty to appeal against that decision as well for the proper guidance of the Court. Otherwise, the appellant is dully advised to engage qualified lawyers/advocates for the proper way

forward of his matter. Mixing distinct legal issues determinable by different courts may make one court lacking jurisdiction for it to determine it properly. The appellant is thus advised, to know the facts of his case well, frame his case properly and submit it to the appropriate jurisdiction of the court.

Having said all this, the appeal is devoid of merits as the trial DLHT was legally justified to reach that finding in consideration of the facts of the case as it lacked jurisdiction. The same is dismissed with costs, and the appellant is dully guided as advised above.

DATED at MUSOMA this 29th day of March, 2022.



F. H. Mahimbali

JUDGE

Court: Judgment delivered this 29th day of March, 2022 in the presence of Appellant, Mary Joachim for Emmanuel Paul Mng'arwe and Mr. Gidion Mugo, RMA

F. H. Mahimbali

JUDGE

29/03/2022