

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 69 OF 2021

*(Appeal from the judgment and Decree of the District land and Housing Tribunal for
Mara at Musoma in Application Number 53 of 2006)*

CRDB BANK LTD APPELLANT

VERSUS

JOHN MASIAGA BABERE RESPONDENT

JUDGMENT

11th March & 2nd May, 2022.

F. H. MAHIMBALI, J.:

The appellant CRBD Ltd, had been respondent in Land Application no 53 of 2006 in which the respondent John Masiaga Babere, claimed a total of general damages of 55,000,000/= and specific damages of 20,000,000/= In the said application, the appellant raised three preliminary legal objection amongst others on the jurisdiction of the DLHT to try a matter with a pecuniary value exceeding its monetary jurisdiction.

In its ruling, the DLHT made the following remarks. *"By the time this application was filed here on 17th August 2006, the pecuniary jurisdiction of the Tribunal in any proceedings where the subject matter was capable of being estimated at a monetary value, it was limited to forty Million. So this tribunal lacked pecuniary jurisdiction to entertain the matter . The applicant made no material submission against the 2nd limb of the preliminary objection, and no submission was made at all by the application as regards to the 3^d part of preliminary objection which means concession. Having observed that, the preliminary objection is hereby upheld".*

That notwithstanding, the chairman of DLHT, went on observing and remarked I quote:

"However, before I pen off this Tribunal being a court of justice and not a court of parties, has something to act upon. There is no dispute that in 5/6/2022, the Musoma District Court vide Misc. Civil Application No 12 of 2000 nullified the application and sale of the applicant's house (the suit land). Now, I wonder a land, what for is the 1st respondent (CRBD) holding the title deed of the applicant. For justice to triumph, I hereby order the 1st respondent (CRBD) to hand over back the title deed over the suit land to the applicant".

The appellant (CRBD Bank Ltd) though the application was struck out but has been aggrieved by the order following the said observation and remark of the DLHT that it erred in ordering so. Thus this appeal propped on the following grounds:

- 1. That the trial chairperson erred in law and in fact by pronouncing a judgment in a case which was not heard on merits.*
- 2. That the trial chairperson erred in law fact by pronouncing a judgment and decree in a case which he had declared that the Tribunal lacked jurisdiction to entertain it.*
- 3. That trial chairperson erred in law and fact when he ordered the appellant to hand over the title deed of the suit land to the respondent while the issue regarding the handing over of the said Title Deed was not tried on merits by the Tribunal*

In essence, behind land Application No 53 of 2006 whose decision is the subject of this appeal, it was preceded by miscellaneous, Civil Application No 12 of 2000. Further and better facts go this way. That, this respondent John Masiaga Babere in 1998 had guaranteed payment of loan of Tshs, 4,000,000/= advanced to one Cosmas Marwa Wanguru by CRDB. In the said gurantee, John Masiaga Babere had put as security his house on plot No 109 of Block J, Lumumba street, Musoma of the said loan in respect of the loan advanced to his fellow Cosmas Marwa

Wanguru. Unfortunately, the said Cosmss Marwa Wanguru died in 1999 just one year after the grant of the said loan. Then the Bank finally sold the house put as security by the respondent in discharged of the said loan advanced as it remained un paid. The respondent, then challenged the said sale against the appellant, buyer and the selling agent Nyamatara Enterprises. The contest of the said sale by the respondent alleged that, the appellant had no right to attach and sale the said house before the appointment of the administrator of the borrower's estate and that his house was sold without notice.

According to the available records, it appears that the said application proceeded ex parte against the appellant and finally the District Court ordered that the sale of the house in issue done on 8/5/2000 was nullity. It further ordered that the buyer of the said house one Ayubu Byabuta to get refunded of the sale price from the appellant CRBD (1996) Ltd, by then.

It is from this ruling of the District Court of Musoma dated 5th June 2002, whereby the subsequent Land Application No 53 of 2006 was filed before the DLHT by the respondent, hopefully after the coming into force of the LDCA, Cap 216, following the enactment and coming into force of new land legislations No 4 and 5 of 1999.

The record establish that the total amount to be paid by the appellants jointly and severally in the said case was Tzs 75,000,000/= as per the following description:

- a) General damages of 50,000,000/=
- b) Compensation for delay of handing over title deed by the 1st Respondent Tshs 5,000,000/=
- c) Special damages for withholding construction work Tshs 20,000,000/=
- d) Costs of the suit.

This case struck out by DLHT as stated here in above and its order is the subject of this appeal.

During the hearing of this appeal, the appellant was dully represented by Mr. Galati learned advocate whereas the respondent fended for himself.

The respondent in this part when replying the appeal prayed to file preliminary objections. As he did, it has been hard to grasp the gist of his objection as he mixed up some issues as those determined in his previous exparte application which nullified the sale of his house and some issues in the subsequent application which is the subject of this appeal. The mixed issues in the said called preliminary objections are

such as Appellant lacks cause of action against the respondent, the appellant lacks locus standi, the appellant failed to appear before DLHT, that the DLHT erred in law when it held that it was wrongful to amend his original application, the tribunal erred to strike out the amended application which it had already ordered them to amend.

In essence, what are called preliminary objections, others ought to have been his grounds of appeal against the finding of the DLHT and others didn't qualify to be grounds of objection as per provided guardelines in the case of Mukisa Biscuits.

All this considered, I have found it meriting if I base my decision on the dully argued grounds of appeal.

I have thoroughly digested the written submissions from both sides, authorities supplied. The vital question to pose here is whether the appeal is merited.

In the digest to the parties' written submissions and available records as provided above, it is undisputed that the sale of the said house which secured or guaranteed the said advanced loan to one Cosmas Marwa Wanguru was nullified by the District Court of Musoma.

Whether that was lawful, it is not the subject or discussion in this appeal.

That to the subsequent land application by the respondent before the DLHT was struck out is also not disputed. Whether the basis of the strike out order on the basis that the DLHT had no pecuniary jurisdiction to determine the said application as argued by the trial chairperson on the basis of the quantum on general damages exceeding 40,000,000/= by then is also not a subject of this appeal. Though I differ with the chairperson in that finding on the basis of the settled law that what determines the pecuniary jurisdiction of the court is not the quantum on general damages but on special damages. Thus, that was an error. Nevertheless, as per concession of other preliminary objections, I find my hand tied up.

On that stance, I agree with the appeal on the arguments raised and duly submitted that, as the application was incompetent before the DLHT, and after it had made such a finding, it was legally precluded from making other material orders as it did though it thought to be vivid to him. It being the order by the District Court of Musoma, it is only executable or enforced by it alone and no other.

As the said decision remains forceful to date, the respondent is advised if so pleased to go back to Musoma District Court and enforce its award subject to Law of Limitation.

Consequently, the appeal is allowed. Considering the nature of the case and the respondent's position, I order no costs as each party shall bear its own costs.

I so order.

DATED at MUSOMA this 2nd day of May, 2022.




F. H. Mahimbali

JUDGE

2/05/2022