

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL CASE No. 96 OF 2021

*(Originating the District Land and Housing Tribunal of Mara at Musoma in Land
Application No. 313 of 2020)*

**1. FINCA MICROFINANCE BANK &
2. MUGABO AUCTION MART & CO. LTD** } **APPELLANTS**
Versus

BWIRE BENARD KASEREKA **RESPONDENT**

JUDGMENT

02.08.2022 & 02.08.2022

Mtulya, J.:

Our superior court in judicial hierarchy in this **State of the United Republic of Tanzania**, the Court of Appeal (the Court), on the 6th day April 2021, had pronounced on the procedure to deal with points of preliminary objection raised during proceedings in our courts and tribunals to check jurisdiction of the cited forums. The generally accepted standard practice is that the points are to be determined before moving into the merit of the matter in disputes filed in courts and tribunals. The Court in the precedent of **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016, at

page 12 of the Ruling had produced the mostly quoted paragraph in this jurisdiction, that:

It is settled law that an objection on point of law challenging the jurisdiction of the court can be raised at any stage ... and it has to be determined first before proceeding to determine the substantive matter.

The practice has been cherished by a bunch of decisions of the Court itself (see: **Meet Singh Bhachu v. Gurmit Singh Bhachu**, Civil Application No. 144/2 of 2018; **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999; **Tanzania Spring Industries & Autoparts Ltd v. The Attorney General & 2 Others**, Civil Appeal No. 89 of 1998; **Method Kimomogoro v. Registered Trustees of TANAPA**, Civil Application No. 1 of 2005; **Godfrey Nzowa v. Seleman Kova & Tanzania Building Agency**, Civil Appeal No. 3 of 2014; **Mary John Mitchel v. Sylvester Magembe Cheyo & Others**, Civil Application No. 161 of 2008; and **Yazidi Kassim t/a Yazidi Auto Electric Repairs v. The Attorney General**, Civil Application No. 552/04 of 2018).

This court too has not been reluctant in following the course taken by our superior court (see: **Agripa Fares Nyakutonya v.**

Baraka Phares Nyakitonya, Civil Appeal No. 40 of 2021; **Rubango Mfungo v. Nyafuru Andrea**, Land Appeal Case No. 95 of 2021; and **Mohamedi Said Hersy v. Ally Hersy**, (PC) Civil Appeal Case No. 38 of 2021). The course is obvious as the practice shows that the raised points may go to the root of the matter and end disputes between parties in our courts and tribunals (see: **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai** (supra); and **Director of Public Prosecution v. Labda Jumaa Bakari**, Criminal Appeal No. 45 of 2021).

In the instant appeal, this court noted, *suo moto*, that the decision of the **District Land and Housing Tribunal of Mara at Musoma** (the Tribunal) in **Land Application No. 313 of 2020** (the application) had received two (2) points of preliminary objection resisting competence of the Tribunal. The two (2) raised points were: first, the application was *res judicata*; and second, the application was incompetent for lack of main suit pending in the tribunal.

After the receipt of the raised points, the tribunal called the parties to register materials in favour and against the points. Ms. Tupage Anna Mwambosya appeared for the **FINCA TANZANIA**

LIMITED (the appellant) and registered relevant materials in favour of the appellant on the two (2) raised points whereas the respondent appeared in person and had replied only one (1) point of the protest, the second point of the law. However, in its decision the tribunal replied only one point of the objection and proceeded with the determination of the main suit. At page 2 of the Ruling, the tribunal stated that:

I have considered the submissions of both parties. It is evident from the record that Hon. Kaare passed a judgment vide Application No. 166 of 2016 nullifying the attachment and sale of applicant's house. That being the case, then I order the respondent [to abide with the order of Hon. Kaare].

This court after noting the fault, it invited the parties to enjoy the right to be heard in explaining the status of the present appeal and appropriate available remedies. It is fortune that both Ms. Mwambosya and the respondent conceded the fault and prayed this court to remit the record to the tribunal for determination of the first point of law to the finality, before moving into the merit of the application.

This court totally supports the directives pronounced by the Court in the precedent of **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai** (supra) and well appreciated by the same Court and this court in a dozen of precedents, as indicated above. The thinking of the Court is that a matter not decided by subordinate courts cannot be determine by the High Court. That is well displayed in the practice of the Court in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018, in brief, that:

It is settled position of the law that a matter not decided by subordinate courts cannot be determine by the [High Court]....the jurisdiction of courts in an appeal is to consider and examine matters that have been considered and decided by subordinate courts.


Following the practice of our superior court and noting the power of this court under section 43 (1) (b) & (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act), I have decided to nullify the impugned judgment of the tribunal in the application delivered on 5th November 2020, as I hereby do, and direct the case file be reverted to the tribunal for the determination of the first point of objection raised by Ms.

Mwambosya, before moving and determining the merit of the application.

I am aware the respondent complained in this court that the current dispute has taken ages in tribunal's corridors and some marching in this court. Following the complaint, I order the expedited hearing and determination of the remaining point of the law to the finality within three (3) months from the date of this judgment, without any further delay. I make no order as to costs since Ms. Mwambosya acted as an officer of this court and the respondent well-cherished the course introduced and taken by this court.

Ordered accordingly.




F. H. Mtulya

Judge

02.8.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellants' learned counsel, Ms. Tupage Anna Mwambosya and in the presence of the respondent, Mr. Bwire Bernard Kasereka.

F. H. Mtulya

Judge

02.08.2022