THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
LAND APPEAL NO. 68 OF 2021
(Originating from the District Land and Housing Tribunal of Mbeya at Mbeya Application No. 180 of 2020)

ALKANDO HAMIS JAFARI .....APPELLANT

VERSUS

NATIONAL MICROFINANCE BANK .....1ST RESPONDENT
TWINS AUCTION MART CO. LTD
AND COURT BROKER.....2ND RESPONDENT

JUDGMENT

17th February & 14th April, 2022

KARAYEMAHA, J.

This appeal traces its origin from the ruling of the District Land and Housing Tribunal for Mbeya at Mbeya (henceforth the Tribunal), which overruled the objections raised by the appellant.

The facts of this case can briefly be told as follows. The appellant sued the respondents in the Tribunal for a declaration that he is the lawful owner of the suit house located at **Mwashiwawala village, Iwindi ward within Mbeya District in Mbeya Region** and that the respondents are trespassers. When the respondents lodged their joint

WSD, they were put to notice that on the date fixed for a hearing of the said application the respondents would raise a preliminary objection on grounds that firstly, the respondents lodged their Written Statement of defence out of time, secondly, the respondents' advocate did not stamp on documents to certify that he was representing them and thirdly, his address was incorrectly written.

Upon hearing parties the tribunal, was satisfied that the objections were unmeritorious and finally overruled them. To express his deep dissatisfaction with the decision, the appellant has preferred the instant appeal raising five (5) grounds which for reasons to be apparent in the course, I shall not reproduce them.

This appeal was heard *ex-parte* because apart from being duly served, the respondents neither appeared to defend themselves nor filed any document. I, therefore, dispensed with their presence and continued to dispose of the appeal. When the appeal was called on for ex-parte hearing, the appellant appeared in person and unrepresented.

In disposing of this matter, I feel constrained to neither consider grounds of appeal nor submissions by the appellant. The apparent reason is that in the process of composing the judgment, I spotted one serious irregularity in the proceedings touching the jurisdiction of the

tribunal. I think, it will be superfluous to decide the appeal on merits. Consequently, I shall exercise my revisional powers to deal with this irregularity.

I will take this course though parties did not address themselves to the anomaly for the following reasons:

In the first place, it is a firm and trite legal stance of the law that Courts are enjoined to decide matters before them in accordance with the law and Constitution irrespective of the attitude taken by parties to court proceedings. This is the very spirit stressed under Article 107B of the Constitution of the United republic of Tanzania, 1977 as amended, which emphasizes very well the stance highlighted above and not otherwise. This stance was also underscored by my brother Hon. Utamwa, J in the case of ***Rajabu Juma Mwasegera v Marriam Hassan***, HC (PC) Civil Appeal No. 13 of 2015, at Tabora (unreported).

Secondly, it is a trite principle of law that a point of law, especially the one touching the jurisdiction of the Court or which goes to the root of the case, can be raised at any stage of the proceedings before judgment. It is as well trite law that it can be raised by the Court *suo motu* basing on the veracity that an issue of jurisdiction is a fundamental one that must be decided before a court decides any other issues. I am

fortified by a line of decisions of the Court of Appeal; the highest court of the land, which give me strength to raise *suo motu* this issue. These cases include ***Faustine G. Kiwi and another v Scolastica Paulo,*** Civil Appeal No. 24 of 2000 (unreported) and ***Nicomedes Kajungu & 1,374 others v Bulyankulu Gold Mine (T) LTD,*** Civil Appeal No. 110 of 2008, following its previous decision in ***Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda and 20 others,*** Civil Appeal No. 8 of 1995 to mention but a few.

For instance in ***Nicomedes Kajungu*** Case (supra) the Court of Appeal speaking through Othman, J.A (as he then was) held thus:

> *"...it is the duty of the Court to satisfy itself that it is properly seized or vested with the requisite jurisdiction to hear and determine a matter. It is a well settled principle that a question of jurisdiction ...goes to the root of determination – see* ***Michale Leseni Kweka v John Eiliafe,*** *Civil Appeal No. 51 of 1997 (CA) (unreported).* ***A challenge of jurisdiction is also a question of competence".*** [Emphasis supplied].

Furthermore, the law is to the effect that where a court is underway composing the verdict discovers a serious irregularity in the proceedings touching the issue of jurisdiction, it can decide on it without

re-opening the proceedings for inviting parties to address it. This position was underscored by the Court of Appeal in the case of ***Richard Julius Rukambura v. Issack Ntwa Mwakajila and another,*** CAT Civil Application No. 3 of 2004.

Guided by the above principles/positions, I turn to discuss the abnormality. On reading the application, I have discovered that the appellant filed the same on 11th September, 2020. Now, the notable irregularity is through paragraph 4 of the application which is couched to disclose the location and address of the suit house. A common ground tells that an application is an instrument which normally institutes proceedings before the District Land and Housing Tribunal as per Regulation 3 (1) of the Land Disputes Courts Act (the District Land and Housing Tribunal) Regulations, 2003 (GN. No. 174 of 2003) (henceforth the Regulation). This instrument replaces the pleadings (a plaint) in suits under the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC). Paragraph 4 of the application in the present matter purported to comply with the mandatory provisions of the law which require an application to disclose the address or location of the suit land. (See regulation 3 (2) (b) of the Regulations). The paragraph under subject, however, only indicates that

the suit house is *"located at Mwashiwawala Iwindi ward within Mbeya District in Mbeya region"* and no more details.

My take is that the description of the land provided for under paragraph 4 of the application was insufficient for determination of a dispute. The legal requirement for disclosure of the location or address was not put in place for decoration purposes. It was intended to inform the tribunal of a sufficient description so as to specify the land in dispute for purposes of identifying it from other areas/land where the house stands. In case of a surveyed land, efforts to mention the plot and block numbers or other specifications suffice the purpose. This is so because, such particulars are capable of identifying the land where the house stands specifically so as to effectively distinguish it from any other land adjacent it. In respect of un - surveyed land, specification of boundaries and or permanent features surrounding the land where the suit house is are important particulars for the purpose of identification. This is what is envisaged by regulation 3 (2) (b) of the Regulation when it talks of the term *location*. The Black's Law Dictionary, 9th Edition, West Publishing Company, St. Paul, 2009 at page 1024 similarly defines the term *location;*

"As a specific place or position of a thing; and in land matters (real Estate) it means the designation of the boundaries of a particular piece of land, either on the record or land itself."

In view of the foregoing definition, it was thus inadequate for the appellant to simply mention that the suit house was in Mwashiwawala Village, Iwindi ward within Mbeya District. My view is based on the fact that the totality of the pleadings (the application) does not make an impression that the suit house stands in the land which covers the whole of Mwashiwawala Village. The impression one gets from the pleadings is that the suit house stands only in part of the land forming the village. It was thus imperative on the 1st respondent to disclose the details of the boundaries and other permanent peculiar features (if any) surrounding the land holding the suit house for the purposes of identifying it from other pieces of land in the same area. The appellant failed to do so in the pleadings denying the land tribunal jurisdiction.

The importance of making detailed description of suit house in resolving disputes can be emphasized. The law, through all amendments, has been constantly underscoring this significance. The provisions of Order VII Rule 3 of the CPC, for instance give lucid wording of the requirement. It guides as follows:

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number".

In my settled opinion Rule 3 (2) (b) of the Regulation should be construed to mean what is envisaged by Order VII Rule 3 of the CPC.

The legal requirement highlighted above is indeed intended for the purposes of an authentic identification of the house in dispute. The intention of the law is to ensure that, the Court determines the controversy between the two sides of a suit related to landed property effectively by dealing with a specific and definite house. The law intends further that, when the court passes a decree, the same becomes certain and executable. Facing the same scenario, my brother Hon. Utamwa, J remarked in the case of ***Ramadhan Omary Humbi and 58 others v Aneth Paulina Nkinda and another,*** HC Land Case No. 99 of 2013 at DSM (unreported) to the effect that held that:

"It is the law that Court orders must be certain and executable. It follows thus where the description of the land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it".

> *"From the outset, and without prejudice, it is to be observed that the learned judge having upheld the preliminary objection that the application was hopelessly out of time, and therefore incompetent, should have proceeded to strike it out.* ***Dismissing the application as happened in this case, presupposes that the application was competent and that it was heard on merits".*** [Emphasis supplied]

Since this appeal was not heard on merits, in the light of the authorities cited above, this appeal deserves a punishment of being struck out as incompetent rather than dismissing it. I therefore strike out the suit for reasons given above. Given the fact that this matter has been concluded on legal point raised *suo motto* by this Court, I desist from awarding costs to any party.

It is so ordered.

Dated at **MBEYA** this **14th** day of **April, 2022**

J. M. Karayemaha
JUDGE