

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

CIVIL APPEAL NO. 13 OF 2021

(Arising from the decision of Resident Magistrate Court of Geita at Geita in Civil Case No. 33 of 2020)

JULIUS NYAGA NJORORO/NJOLOLO

(Administrator of the Late Nyaga Njololo/Njororo) -----APPELLANT

VERSUS

LUTONJA MASHILINGI-----1st RESPONDENT

JACKSON MANYAMA-----2nd RESPONDENT

SALUM MAFUMBA-----3rd RESPONDENT

JUDGMENT

Last Order: 25.08.2022

Judgment Date: 31.08.2022

M.MNYUKWA, J.

This is the first appeal against the Ruling of the Resident Magistrate's Court of Geita at Geita after the preliminary objection raised was sustained and the case was dismissed. The appellant was the Plaintiff before the trial court and the respondents were the defendants. The appellant is now appealing before this court with 5 grounds of appeal thus:-



- 1. That the honourable trial court erred in law in entertaining an objection brought in separation with the written statement of defence (WSD).*
- 2. That the learned trial magistrate erred in law in entertaining the objection raised by the respondents while in law it did not qualify to a point of law.*
- 3. That the learned trial magistrate erred in law and in fact in holding that the dispute in civil case No. 33 of 2020 whose decision /ruling is subject of this appeal is a land dispute.*
- 4. That the learned trial magistrate erred in law and in fact in holding that the 1st respondent claimed ownership of the Land alleged to have been fraudulently sold and so holding that the appellant should first prove ownership of the said piece of land.*
- 5. That the learned trial magistrate erred in law for receiving during the submission of the preliminary objection a copy of the judgment of Land Case No. 27 of 2019 of the District Land and Housing Tribunal for Kahama.*

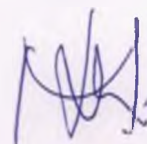
When the matter was called for hearing, Mr. Bakari Chubwa Mheza, learned advocate represented the appellant and Amos Gondo, learned advocate appeared for the 1st respondent and the learned counsel Yulitha Hezron for the 3rd respondent. Mr. Bakari Chubwa informed the court that the 2nd respondent is now a deceased and prayed for the matter to abet for the 2nd respondent, the prayer which was duly granted by the court and the hearing proceeded for the 1st and 3rd respondents.



The appellant learned counsel was the first to submit and he prayed to argue the 2nd, 3rd and 4th grounds jointly and abandon the 5th ground.

Submitting on the 1st ground, he avers that the preliminary objection filed out of the WSD goes contrary to law for the law requires that objection be accompanied by the pleadings. He cited Order VIII Rule 2 of the CPC Cap. 33 RE 2019 and the case of **Kenya Commercial Bank (T) Limited vs Decta Ltd and 6 Others**, Commercial Case No.65 of 2006, HCT Commercial Division to support his argument. He insisted that it was wrong for the trial court to sustain the preliminary objection which was brought on the wrong procedure.

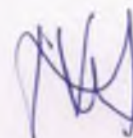
On the 2nd, 3rd and 4th grounds of appeal, he submitted that, in the plaint, there were two disputes first, fraudulent sale of the land owned by the appellant's father and second receiving proceeds from the land which is not his property. He went on that, the WSD of the 1st and 2nd respondents did not show that there was a claim of ownership of the land. He went on insisting that, the trial court erred as reflected on page 3 of the Ruling that the 1st respondent claimed ownership of the land. He claims that, the decision of the trial court was not backed up by the pleadings. He cited the case of **Happy Kaitira Barilo t/a Irene**



stationary and Another vs International Bank (T) Ltd, Civil Appeal No. 115 of 2016 CAT that parties are bound by their pleadings. He went on to submit that, proof of ownership is an evidential issue which cannot be brought in a preliminary objection. He prays for the appeal to be allowed.

The 1st respondent did not object to the appeal, he supported the appeal and prays to be exempted from costs. The 3rd respondent's learned counsel opposed the appeal. Submitting on the 1st ground of appeal, she averred that, the preliminary objection on the point of law can be filed at any stage. Referring to the appeal at hand, the learned counsel avers that the issue of jurisdiction is a pure point of law that can be raised at any time. Insisting, she cited the case of **A/S Noremco Construction vs Dar es Salaam Water and Sewage Authority (DAWASCO)** Commercial Case No. 47 of 2009, HCT. He insisted that the preliminary objection was properly filed.

On the 2nd, 3rd and 4th grounds of appeal, she avers that the third respondent was acting in his official capacity and he was not aware if the documents were fraudulently obtained and pray this court to find that the 3rd respondent is not connected to the case.



Rejoining, the appellant learned counsel reiterates his submission in chief adding that, on the first ground, for the reason that there are conflicting decisions, he leaves for the court to decide.

On the joint grounds, he insisted that joining of the 3rd respondent is a legal issue since he was a part to the main case, therefore, no way that this court can discharge him as a party to the case as prayed for by the 3rd respondent's learned counsel. He maintains his prayers that this appeal be allowed with costs.

After the submissions from parties, it is clear that the 1st respondent learned counsel supported the appeal and the 3rd respondent opposed. In determination, therefore, I will start with the 1st ground that, the preliminary objection was not properly placed before the trial court. On records, on 31st March 2021, the counsel for the defendants filed a notice to the trial court that fronted two points of the preliminary objection and the first point of the preliminary objection was that, the trial court had no jurisdiction to entertain the matter. The trial court determined the raised preliminary objection and sustain the same and dismissed the suit. The appellant learned counsel is now disputing the trial court on the first



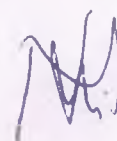
ground that the preliminary objection was not properly filed before the trial court.

As it stands, the law is clear that the issue of jurisdiction can be raised at any stage of the case even at the time of composing the judgment. In the case of **Ibrahim Omary vs The Inspector General of Police & Two Others**, Civil Appeal No. 20 Of 2009 CAT, the Court of Appeal held that:

"There is no dispute that in law jurisdiction is a matter which can be raised at any stage of the trial in a case. In this sense, although it is a bit unusual and unfortunate that the issue was raised at the late stage of the case, strictly speaking, the judge did not error in raising it at the end of the judgment."

See also **Fanuel Mantiri Ng'unda v. Herman M Ngunda**, Civil Appeal No. 8 of 1995 CAT, **Consolidated Holding Corporation Ltd v. Rajani Industries Ltd and Bank of Tanzania**, Civil Appeal No. 2 of 2003, CAT (unreported) **M/S Tanzania China Friendship Textile Co. Ltd v. Our Lady of the Usambara Sisters** [2006] TLR 70

In light with the cases cited above, I did not agree with the appellant's learned counsel that the respondent raised a preliminary

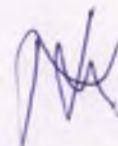


objection informally rather, what I find, the respondent learned counsel was right and proper to file a notice of preliminary objection which was argued and determined accordingly. In fine, this ground lacks merit.

On the consolidated grounds of appeal, the appellant learned counsel avers that, the claim against the respondents was the fraudulent sale of the land owned by the appellant's father and receiving proceeds from the land which is not his property. He went on insisting that, the trial court erred on its Ruling to hold that there was a claim of ownership of the land that oust the jurisdiction of the court.

I perused the trial court records and the impugned Ruling which is the subject of this appeal. What is observed is that, the claim solely is on the dispute of land as rightly held by the trial court for a reason that, the appellant claims that after the purported fraudulent sale, the respondents continued to get proceeds which the appellant intends to recover.

In determination as to whether based on the records the trial court has jurisdiction, I referred to the case of **The Attorney General vs Reverend Christopher Mtikila**, Civil Appeal No. 45 Of 2009, the Court of Appeal gave a precise meaning of Jurisdiction and its construction as

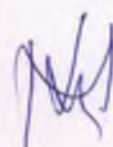


the Court of Appeal cited STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES to mean that: -

"In the narrow and strict sense, the jurisdiction of validity constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference.

- 1) To the subject matter of the issue or*
- 2) To the persons between whom the issue is joined*
- 3) To the kind of relief sought or to any combination of these factors."*

Going to our case at hand, the subject matter of which the dispute is all about is Land and there is no clear cut between the appellant and the 1st respondent on the ownership. As it stands, the appellant who is the administrator of the Estate of his deceased father claims that the land is a part of the estate of the deceased and the 1st Respondent has no colour of right to benefit from its sale and collects proceeds. This proved that there is un-determined dispute of ownership of the land in dispute and the trial court properly ruled out that it has no jurisdiction to determine the matter. Looking at the reliefs sought, is the combination of the above factors retells it all that there is un-determined issue of




ownership between parties. Upon visiting of the appellant's plaint, one of the reliefs sought is that: -

"a perpetual order restraining the 1st and 2nd defendants from deceiving and getting proceeds from the shamba already fraudulently sold by them."

To my understanding, this kind of relief asks the trial court to grant injunction order restraining the respondents from benefiting from the proceeds from the shamba as they are not entitled to, since they are not the owners of the said shamba. Thus, to my view, the determination on the issue of ownership is inevitable.

In the case of **Exim Bank (T) Ltd v Agro Impex (T) and others**, Land Case No 29 of 2008 (unreported), this court pointed out that; in looking at whether the court had jurisdiction or not, two things are important to be looked upon, the pleaded facts that may constitute the cause of action and the relief(s) claimed.

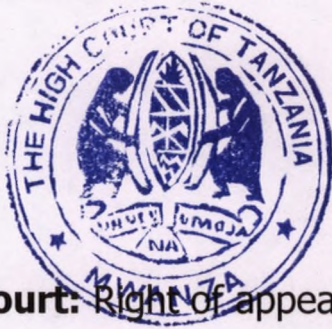
In light of what is stated above, the trial court was right to hold that it has no jurisdiction to entertain the matter for the jurisdiction was conferred to the District Land and Housing Tribunal which was specifically created for among others, the purpose of a speedy adjudication of land disputes governed by the Land Dispute Courts Act (Cap 216) RE 2019, to




the exclusion of the ordinary courts created under the Magistrates' Courts Act (Cap 11 R.E 2019). I hold that view because the pleaded facts as contained in the plaint and the relief sought suggest so.

In fine, I find the appeal lacking and therefore fails. Consequently, the costs be borne by the appellant.

Order accordingly.

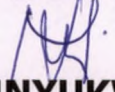



M.MNYUKWA

JUDGE

31/08/2022

Court: Right of appeal explained to the parties.


M.MNYUKWA

JUDGE

31/08/2022

Court: Judgement delivered in the presence of the counsel of the 2nd respondent through audio teleconference and in the absence of other parties.


M.MNYUKWA

JUDGE

31/08/2022