

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPEAL. NO. 23 OF 2021

(Arising from the District Land and Housing Tribunal for Mwanza in Land Case No. 115 of 2018. Original Land case No. 6 of 2018 Buhongwa Ward)

NTULUGU KAMANGU.....APPELLANT

VERSUS

LUTONGISHA MIYELEKO.....RESPONDENT

JUDGMENT

26th July & 30th August, 2020

DYANSOBERA, J.:

This appeal filed by the appellant herein is against the judgment and decree of the District Land and Housing Tribunal delivered on 24th day of March, 2021 dismissing the appellant's appeal. In his petition of appeal, the appellant has filed a total of four grounds of appeal as follows:

1. That the Land and Housing Tribunal erred in point of law and fact to entertain a matter that is of inheritance in nature.
2. That the Land and Housing Tribunal erred in point of law and fact to go ahead and hearing the matter that the appellant was not chosen as the administrator of the estate

'wajumbe was Baraza la Kata wamesikiliza kwa makini maelezo yaliyotolewa na pande zote mbili pamoja na Ushahidi uliotolewa na pande zote mbili na Baraza linatamka kuwa mdai ameshinda na mdaiwa ameshindwda.

Kuanzia leo eneo la mdai lisiingiliwe na mtu yeyote.'

The appellant's first appeal to the District Land and Housing Tribunal was dismissed hence this second appeal.

At the time of hearing this appeal, the appellant appeared in person while the respondent was represented by Mr. Frank Obeid, learned Advocate.

Supporting his appeal, the appellant told this court that he had been in that suit land for more than 48 years when his grandfather Feleshi Mwanandulu started using the land. He got the children while in the same area.

Resisting the appeal, learned Counsel for the respondent undertook to argue jointly the 1st, 2nd and 3rd grounds of appeal as they are similar. He contended that the appellant seems to treat the matter as probate though it is a land case as reflected also in the grounds of appeal. He argued that

at the trial Tribunal the evidence of the parties shows that the pieces of land were theirs and not of inheritance. According to learned Counsel, the area in dispute is different from the one the appellant owns but that the respondent's area has been taken and sold by the appellant. He maintained that there was no evidence to prove that the suit land is a probate matter and that the appellant's argument that he has owned it for 48 years has no substance. It was learned Counsel's contention that the invasion started by way of tilling the land. He dismissed the doctrine of adverse possession. Counsel for the respondent urged the court not to consider the grounds 1-3 which are new and sought to buttress his argument by citing the case of **Raphael Erneas Mngazija v. Abdallah Kalonjo Juma** and prayed the appeal to be dismissed.

In a brief rejoinder, the appellant argued that the case started before his father died.

Having carefully gone through the lower Tribunals' records and after considering the grounds of appeal, my finding and decision are as follows.

As rightly argued by learned Counsel for the respondent, this was a land dispute matter and the evidence was led to establish who the rightful owner was. However, before delving into the grounds appeal, I have to

decide whether the Ward Tribunal at Bugogwa was seized with the requisite jurisdiction to try the suit presented before it by the respondent.

The jurisdiction of the Ward Tribunal to hear land matters is clearly stipulated by the law. Section 15 of the Land Disputes Courts Act [Cap 216 R.E, 2019] enacts thus:-

‘Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 1985, the Jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings’

Having gone through the proceedings before the trial Tribunal, there is nothing indicating that the said Tribunal was clothed with jurisdiction to hear and determine the suit. As to how reference of matters is made to the Ward Tribunal, section 11 (1) of the Ward Tribunals Act [Cap. 206 R.E.2019] is clear that it is by way of a complaint which can be made orally or in writing but if made orally it shall be reduced in writing by the person to whom it is made; and in either case, shall be signed by the complainant and the person to whom it is made.

In practice, it is the respondent who was duty bound to establish that the Ward Tribunal was clothed with the jurisdiction to try such a suit. This

establishment could be by way of a complaint signed by the respondent and a person to whom it was made.

In the instant case, there was no such a complaint, whether oral or written. It is my view that the respondent who was the complainant had the duty at the appropriate stage, to indicate the value of the disputed land.

It is elementary and prudence demands that before a magistrate or a judge or even a Tribunal sets out to determine a case the first and fundamental question that they have to ask and satisfy themselves is whether or not they are seized with the requisite jurisdiction to dispose it of. This legal position was echoed by the Court of Appeal of Tanzania in the case of **Meneja Mkuu, Shirika la Umeme Zanzibar v. Juma Simai Mkumbini and Others**, Civil Appeals No. 41,42,43,44 and 45 of 2011 (unreported) where at p. 3 the Court, *inter alia*, observed that:

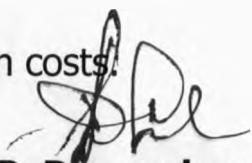
‘Secondly, in determining the jurisdiction of a civil court the averments made in a plaint are material. In effect, this means that the jurisdiction of a court should normally be determined on the basis of the case put forward by the plaintiff in the plaint and not by the defendant in the written statement of defence. It is the law, therefore, that the averments made in a plaint usually decide the forum.’

Since there is nothing indicating that the Ward Tribunal, before embarking on entertaining and deciding the matter between the parties did ascertain whether or not it was seized with jurisdiction to try the suit, it cannot be gainsaid that the trial Tribunal acted without jurisdiction. The Bugogwa Ward Tribunal was, therefore, wrong to assume the jurisdiction which it had not ascertained to possess before it embarked on trying the suit between the parties. The first appellate District Land and Housing Tribunal erred in assuming that the first trial Tribunal had pecuniary jurisdiction.

For those reasons, invoking the revisionary powers conferred on me, I revise the proceedings of both the District Land and Housing Tribunal and the Ward Tribunal by **nullifying** the decisions of the District Land and Housing Tribunal and that of the Ward Tribunal, quashing them and setting them aside.

Since the law has now changed and the respondent is no more, an order for retrial would serve no useful purpose.

Each party to bear its own costs.



W.P. Dyansobera

Judge

30.8.2022

This judgment is delivered under my hand and the seal of this Court his 30th day of August, 2022 in the presence of all parties.

Rights of appeal to the Court of Appeal explained.




C.M. Tengwa
DEPUTY REGISTRAR
30.08.2022