

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 48 OF 2022**

*(Arising from Land Application No. 158 of 2021 in the District Land and Housing  
Tribunal for Mara at Musoma)*

**KUYENGA NYAMSIMBWA..... APPELLANT**

**VERSUS**

**MAIRA PARAPARA..... RESPONDENT**

**JUDGMENT**

*25<sup>th</sup> & 31<sup>st</sup> October, 2022.*

**M. L. KOMBA, J.:**

A dispute arose during the proceedings in the District Land and Housing Tribunal of Mara at Musoma (the Tribunal) in Land Application No. 158 of 2021 (the dispute) where the appellant to this appeal lodged on preliminary objection on the point of law that the Tribunal had no Jurisdiction to entertain the matter which was not first passed for mediation at the Ward Tribunal. Satisfied by the position of law as forwarded by the counsel for the respondent, the chairman upheld the Preliminary Objection and dismissed the application with costs. Not satisfied by the said decision especially on the interpretation and the use of word 'any' appellant lodged this appeal with two grounds that;

- 1. That the trial Tribunal Chairman erred on point of law to interpret the word "any" to mean "all", which wasn't the intention of the Parliament.*
- 2. That since the law never touched the provisions that gave the trial Tribunal original jurisdiction powers; it was misdirection on part of the Chairman to hold that all matters have to start before the Ward Tribunal.*

The parties were consulted on the subjects to cherish the right to be heard, the appellant was enjoying the service of Mr. Baraka Makowe while the respondent consulted the legal services of Mr. John Manyama both are advocates. Mr. Makowe submitted that the spirit of his appeal is from amendment introduced by Written Law (Miscellaneous Amendments) (No. 3) Act of 2021 (here in after referred as the Act No. 3) where S. 13 of Land Courts Act, Cap 216 (the Act) was affected but Section 33 was not affected and according to him there is no need of subjecting section 33 to the Act to the amendment introduced by Act No. 3. He said if the definition of the chairman was correct then all disputes must start in Ward Tribunal which is not correct.

He further submitted that our court system through section 3(2) of the Act introduces five courts to solve the land issues in various sections. He

presented definition of word 'any' from the Chambers 20<sup>th</sup> Century Dictionary of 1983 by M.E.K Patrick and listed many options available including 'to an appreciable extent' fits the current situation (while leaving other interpretation like 'indefinitely', 'which-ever', 'no matter', which at all). He said if the property value is more than 3,000,000/ a party should proceed to the tribunal because section 33(2) of the Act was not affected and the chairman interpretation was wrong. He supported his submission by citing the case of **Joseph Sinde Warioba V. Stephene Wasira** (1997) TLR 272 and **Goodluck Kyando V.R** (2006) TLR 363 on purposive approach. He said Act No. 3 if will be interpreted as the chairman did it will deprive even the jurisdiction of the High court.

Mr. Makowe was of the view that if the National Land Policy intends to speed up determination of the land suits, we will fail we concede with the Chairman definition. He prayed the court to note that he argued in both grounds and pray the appeal be allowed.

The submission registered by Mr. Makowe was protested by Mr. Manyama that interpretation made by the chairman was correct because our legal system has two laws concerning land which are Cap 113 and Cap 114. From these two legislations the Parliament enact Cap 216 to settle disputes arising

out of these two legislations with levels as elaborated by fellow counsel. To substantiate his argument Mr. Manyama said, Act No. 3 affected Section 13 of Cap 216 by increasing the contents at section 45 to mean that any matter must first be settled at Ward Tribunal regardless of its value before going for determination.

According to Mr. Manyama the spirit of Land Policy on speediness of solving land disputes is enhanced by mediation and or amicable settlement of the disputes. The new section as introduced by Act No. 3 will not deprive the High Court Jurisdiction as there is proviso of time limitation of 30 days if the dispute is not solved then the party can proceed to other courts. He prays this court to dismiss the appeal and pressed for costs of the suit.

In handling this appeal I had time to peruse the record of the Tribunal and read the provisions of enactment which parties had different interpretation approach. The chairman of the tribunal while upholding the Preliminary Objection said;

*'...ni maoni yangu kwamba kwa mujibu wa sheria tajwa (Mabadiliko ya Sheria mbalimbali Na. 3/2021 baraza hili halina Mamlaka tena ya kupokea Mgogoro wowote wa ardhi bila ya mgogoro huo kwanza*

*kupitia Baraza la kata kwa ajili ya usuluishi....shauri hili halikufuata sheria lilipofunguliwa hapa Mahakamani...'*

Mr. Makowe remonstrated the above fact by complaining over the definition relied by the chairman on the use of word 'any' from Section 45 of Act No. 3 which has the following words;

*'S.45 Section 13 of the Act is amended by adding sub section (4)*

*(4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably:*

*Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal.'*

This section used simple language contrary to what Mr. Makowe was thinking. The definition of word 'any' as used in the quotation strained the appellant and provided various meanings. Oxford Advanced Learner's Dictionary, 10<sup>th</sup> Edition (accessed online) defines word 'any' to mean a determiner.

*'...it is used with uncountable or plural nouns in negative sentences and questions, after if or whether, and after some verbs such*

*as prevent, ban, forbid, etc. to refer to an amount or a number of something, however large or small'.*


The word refers to an amount (large or small) as used in the legislation it refers to a big number of proceedings, any proceedings, the tribunal is ban to proceed if the matter was not first referred to Ward Tribunal.

While introducing this sub section the Parliament repealed section 15 of the Act which provide pecuniary jurisdiction of the Ward Tribunal. This was so in order to allow the Ward tribunal to receive and solve land disputes before being instituted to the Tribunal. Legislature was aware of the existence of section 33 of the Act when they introduce S. 45 of Act No. 3. I agree with learned counsel Makowe that Section 33 was not affected for the meaning that it was not repealed, however, section 45 of Act No. 3 introduces a mandatory requirement of reference of dispute to Ward Tribunal. This development of law has been introduced in our system in less than two years from today, most of Advocates some parties are not aware of. As decided in **Musa Ochieng V. Othiambo Ogila**, Misc. Land Appeal No. 30 of 2022, (unreported) **Media neutral citation** [2022] TZHC 11764 2022-08-16 that parties have to comply with this amendment by first refer land dispute to proper tribunal.


Bearing in mind the use of word 'shall' in that section and the definition of word 'any' as provided to mean 'indefinity' the section was correctly interpreted by the Chairman as was decided by this court in the case of **Musa Ochieng V. Othiambo Ogila (supra)**. From the analysis, the objection was correctly sustained. I found the ground of appeal non meritorious.

Consequently, the appeal is dismissed with costs.



  
**M. L. KOMBA**  
**JUDGE**  
**31 October, 2022**

Judgement Delivered today in chamber in the presence of counsel for appellant and in the absence of respondent.

  
**M. L. KOMBA**  
**JUDGE**  
**31 October, 2022**