

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

LAND APPEAL No. 28 OF 2021

*(Arising from the DLHT in Misc. Land Application No. 25 of 2021 which arose from
Lusahunga Ward Tribunal in Land Dispute 118 of 2019)*

GORDIANI KABIGUMILA APPELLANT

Vs

JULIUS KAGOMA RESPONDENT

JUDGMENT

13/9/2022 & 7/10/2022

ROBERT, J:-

By the Petition of Appeal, the appellant came to this court to challenge the decision of the District Land and Housing Tribunal for Chato (hereinafter referred to as DLHT) which decided the matter in favour of the respondent.

Briefly, facts giving rise to this appeal reveals that, having been aggrieved by the decision of the Ward Tribunal of Lusahunga, the respondent herein filed Misc. Land Application No. 25 of 2021 at the DLHT moving the DLHT to examine the record of the proceedings of Lusahunga Ward Tribunal in Land Dispute No. 118 of 2019 for the purpose of satisfying itself as to the legality, correctness and propriety of both the

proceedings and judgment delivered on 31/12/2019 in order to make necessary orders to regulate the irregularities therein.

The respondent herein who was the applicant at the DLHT informed the Tribunal that, the appellant herein filed Land Case No. 118/2019 at Lusahunga Ward Tribunal on 22/10/2019. Prior to the filing of that case at the Ward Tribunal, the respondent herein had on 8/10/2019 instituted Land Application No. 21/2019 in the DLHT involving the same subject matter as the one in Land Case No. 118/2019 related to the same personalities. He stated that the Chairman of the DLHT having been aware of the two cases, had written a letter to the Chairman of Ward Tribunal asking him to restrain from entertaining Land Case No. 118/2019 due to the pending Land Application No. 21 of 2019 before the DLHT. However, the Chairman proceeded to hear and determine Land Case No. 118/2019 and delivered its judgment in favour of the appellant herein. In his reply, the appellant herein raised a preliminary point of objection and stated in the counter-affidavit to the effect that the application for revision (Misc. Land Application No. 25 of 2021) before the DLHT was filed out of time after more than 138 days which is beyond the prescribed period of 60 days.

However, the DLHT proceeded to determine the application for revision without determining the point of objection raised by the appellant herein and nullified the proceedings of the Ward Tribunal and the decision thereof on grounds that the proceedings of the trial Tribunal did not carry the names of the members composing the trial Tribunal on the days on which the case was heard and further that the decision of the trial Tribunal was signed by the secretary of the Tribunal who is not a member of the Ward Tribunal. Aggrieved by the decision of the DLHT, the appellant preferred this appeal against the decision of the DLHT on the following grounds: -

- 1. That the District Land and Housing Tribunal for Chato at Chato erred in law and fact for failure to determine first the preliminary objection which was based on an issue of jurisdiction raised by the appellant and filed in court on the 30th day of July 2021*
- 2. That the District Land and Housing Tribunal for chato erred in law and fact for disregarding the preliminary point of law which touches the jurisdiction of the court on the ground that it was misplaced for being filed late when the application was already scheduled for hearing without considering that preliminary objection on the point of law on the issue of jurisdiction can be raised at any stage of proceedings even on appeal.*
- 3. The District Land and Housing Tribunal erred in law and in fact contravened the decision of the Court of Appeal of Tanzania at Dar es salaam before (Lubuva, J.A., Msofe, J.A and Mbarouk, J.A) in Civil appeal No. 27 of 2003 between Hashimu Madongo and 2 Others Vs Minister for Industry and Trade and 2 Others.*

4. *That district Land and Housing Tribunal for Chato erred in law and fact for entertaining a fresh application for revision and determining it on merit while the same application for revision that is Misc. Land Application No. 11 of 2020 was already been instituted and struck out on 03/11/2020 before hon Colex, B for being time-barred.*
5. *That the District Land and Housing Tribunal for Chato erred in law and fact for entertaining the application for revision as an alternative to appeal.*
6. *That the District Land and Housing Tribunal for Chato erred in law and fact by concluding that the appellant was a party to Land Application No. 21 of 2019 while the affidavit supporting the application shows that he was not a party to the said application and no prove were tendered to prove that the appellant at the time he filed Land Dispute No. 118/2019 at Lusahunga ward tribunal Biharamulo District he was a party in the said alleged Land Application No. 21 of 2019.*
7. *That the District Land and Housing Tribunal for Chato erred in law and fact for entertaining Land Application No. 25 of 2021 which was filed out of time.*

When the matter came up for hearing the appellant was present in person without representation whereas the respondent was represented by Mr Constantine Ramadhan, learned counsel. At the request of parties, the Court ordered the application to proceed by way of written submissions.

Submitting on the first ground, the appellant faulted the DLHT for its failure to determine the preliminary objection which was based on issues of jurisdiction raised by the appellant and filed in Court on 30th day

of July, 2021. He submitted that the Chairman was required to determine first if the DLHT had jurisdiction to determine the application for revision which was filed out of time. He clarified that the Chairman's ruling that the appellant's Notice of Preliminary objection is misplaced did not determine the preliminary objection.

In response to this ground, the respondent submitted that the chairperson took on board the submissions relating to the raised preliminary objection in her ruling. He maintained that, it was a matter of prudence for the Chairperson in composing her ruling to take on board the submissions relating to the raised preliminary objection instead of considering the preliminary objection in isolation. He maintained that the preliminary objection was overruled by the Chairperson.

In rejoinder submissions, the appellant reiterated his argument on the first ground that the DLHT did not first decide the preliminary objection raised by the appellant. He referred the Court to page 1 and 2 of the impugned decision of the DLHT where the Tribunal stated that:

"Mjibu maombi aliomba maombi haya yasikilizwe kwa njia ya maandishi ambapo pande zote mbili waliridhia kuwa maombi haya yasikilizwe kwa njia ya maandishi, hata hivyo hali ya kushangaza Mjibu maombi pamoja na kuwasilisha hoja zake kwa maandishi "written submission" aliwasilisha pia taarifa ya pingamizi la kisheria "notice of

preliminary objection” ambapo baada ya kuyapitia mapingamizi hayo niligundua pia yameelezwa kwenye hoja zake za kimaandishi lakini pia maoni yangu kuwa mapingamizi haya yapo kimakosa mbele ya baraza hili “misplaced” kutokana na ukweli kuwa amri ya baraza hili ilikuwa wadaawa kujibizana kuhusu maombi ya marejeo na si kuibua mapingamizi katika hatua hii”.

To start with this ground of appeal, this Court is aware of the principle in our legal practice that once a preliminary objection on a point of law is raised, it must be determined first before Court proceeds with the hearing of the matter on merit. In the present matter, considering the fact that the point of law raised by the appellant herein through his preliminary objection touched on the issue of jurisdiction of the DLHT to determine the application before it, it basic for the DLHT to decide on the objection raised before proceeding with the application on merit since the raised objection goes to the very root of the matter by challenging the authority of the Tribunal to adjudicate on the matter.

In the case of **Meet Singh Bhachu Vs Gurmit Singh Bhachu** Civil Application No. 144/02 of 2018 CAT (unreported) the court held that:

*“it has been the practice of this court, which appeals to logic, that **once the preliminary objection has been raised, it must be heard first** and the other party is precluded from doing anything to pre empty it”*

See also the decisions in **Method Kimomogoro Vs Registered Trustee of TANAPA**, Civil Application No. 1 of 2005, **Godfrey Nzowa V Selemani Kova & Tanzania Building Agency** Civil Appeal No. 3 of 2014 and **Mary John Mitchel Vs Sylvester Magembe Cheyo & Others** Civil Application No. 161 of 2008 (All unreported)

Having examined the records of this matter, it is evident that a preliminary objection was raised by the respondent on the 30th day of July 2021 through a Notice of Preliminary Objection stamped by the DLHT as received. The DLHT proceeding shows that when the revision came for mentioned on 16th August 2021 the Notice of Preliminary Objection was already in the court file but the chairperson disassociated herself with it. Again on the 25th of August, 2021 the application for revision was heard on merit without taking into consideration the presence of the Notice of Preliminary Objection in the court file. As rightly indicated by the appellant, the Chairperson disregarded the appellant's submissions on the point of objection by stating that the submissions on the objection were "misplaced" for being raised at that stage.

In the case of **Khaji Abubakar Athumani Vs, Daud Lyakugile D.C. Aluminium & Another** Civil Appeal No. 86 of 2018 CAT (Unreported) the court held that:

*"...the failure by the learned magistrate with extended jurisdiction to deliver the ruling on the preliminary objection which he had scheduled to deliver on 16/9/2009 constituted a colossal procedural flaw that went to the root of the trial. It matters not whether it was inadvertent or not. **The trial court was duty bound to dispose of it fully, by the pronouncement of the ruling before dealing with the merits of the suit. This he did not do. The result is to render all subsequent proceedings as a nullity.**"*

In the present matter, considering that the Chairperson of the DLHT failed to make a determination on the preliminary objection raised by the appellant first before determining the matter on merit, this Court finds that there was a procedural irregularity committed by the trial chairperson that vitiated the entire proceedings starting from 30th July, 2021. Consequently, I hereby declare the proceedings of the trial tribunal from 30th July, 2021 a nullity and quash them accordingly. I further set aside the decision and decree arising therefrom and direct that the matter be heard afresh by another Chairman who will hear and determine the preliminary objection raised by the appellant herein before proceeding with the matter on merit in case the preliminary objection is not sustained. In the circumstances, I find no pressing need to make a determination on the remaining grounds of appeal. I make no order for costs as none of the parties occasioned the alleged irregularity.

It is so ordered.




K.N.ROBERT
JUDGE
7/10/2022