

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**PC CIVIL APPEAL NO. 25 OF 2022**

***(Arising from the decision of Civil Appeal No. 14 of 2021 in the District Court  
of Tarime at Tarime)***

**GODFREY ORANGO..... APPELLANT**

**VERSUS**

**DANI LISUBI..... RESPONDENT**

**JUDGEMENT**

*27<sup>th</sup> October & 4<sup>th</sup> November, 2022.*

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

The appellant herein was aggrieved by decision of the first appellate court in Civil Appeal No. 14 of 2021 where the decision of the trial court, Shirati Primary Court (Trial Court) which decide in favor of the respondent was upheld for the reason that the appellant failed to prove his case to the balance of probability. The Appellant had planted tree in his farm and that on 12/08/2019 he was informed by his young brother that the respondent was cutting tree in his farm. The Appellant reported the incidence in proper authorities where evaluation was conducted at the District level and the civil case was filed in the trial Court.

In deciding the case, trial court was satisfied that the respondent was not given right to be heard even at the village level where the appellant reported

the matter. The Village Executive officer was among the witnesses of the appellant but the case was not mediated at his office nor the information of existence of the complaint was communicated. He lost his case as well as his appeal hence he preferred this second appeal.

When the appeal was called on for hearing, Mr. Evance Njau was representing appellant while Respondent hired legal services from Florida Makaya both learned advocates. As it is the tradition, the appellant was the first to address the court, he prayed for and was given right to raise a point of law.

Mr. Njau submitted that upon closer perusal of his client file he discovered the trial court had no jurisdiction to determine the matter as was purely a land matter. He said he address this basing on the definition of word land as provided under section 2 of Land Disputes Courts Act, Cap 216 (herein after referred to as Cap 216) that the compensation which the appellant was claiming originate from the cutting of tree from his farm. He further submitted that, trees were attached to the land and that according to section 3 of Cap 216 there are courts designated for hearing land issues and Primary Court is not among them.

Mr. Njau further argued that, the Magistrate Courts have only jurisdiction to entertain matter of criminal nature concerning land. Record of proceedings from the first appellate court show that the claim was about cutting of trees and he referred this court at page 4 of the trial court judgement where the court determine the owner of the land which was alleged to be destructed. In support of his argument, he referred this court to its previous decision in **Mwanaisha Rashidi vs. Meri Dede and Odero Dede** PC Civil Appeal 14 of 2021 HC Musoma, when the court was faced with the akin situation and ruled that Primary Courts, District Courts and Resident Magistrate Courts has no jurisdiction to entertain the case of land nature.

It was the contention of Mr. Njau that the appellate first appellant court while entertain the appeal was given an alert to take judicial notice that there was a case in the Kitembe Ward tribunal but proceed to entertain the appeal. He prays this court to invoke its revisionary powers under section 31 of Magistrate Courts Act, Cap 11 and nullify proceedings and judgement of both lower courts.

Ms. Makaya submission was equally optimistic. Apart from her short submission that Mr. Njau was misdirected himself by alleging that the trial court and the first appellate court had no jurisdiction because the issue in

those two courts were about compensation which, according to her, is a civil nature, she conceded to Mr. Njau's submission that the issue of jurisdiction was raised in the first appellate court and it is the appellant who objected it claiming that the matter in Ward tribunal has no connection with the one at appeal level and argue the court to proceed in merit. It was her submission that if this court will find the issue of jurisdiction is paramount, she pray for the cost because the appellant is the one who denied it in the first place.

The trial court ought to have realized that the allegation that bred the instant appeal is land issue which needed first to determine who was the owner of the land before proceeding in determining the destruction. When determining whether the appellant (previous the applicant) has locus standi then it turn out to be the land matter for which the District Court lacking jurisdiction. As submitted by Mr. Njau let me first reproduce the definition of land and hierarch of land disputes courts from Cap 216 for smooth analysis.

*S 2. 'land' includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land;*

*S. 3 .-*

*(1) Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.*

*(2) The Courts of jurisdiction under subsection (1) include-*

*(a) the Village Land Council;*

*(b) the Ward Tribunal;*

*(c) the District Land and Housing Tribunal;*

*(d) the High Court; or*

*(e) the Court of Appeal of Tanzania.*

Mr. Njau informed this court that while in first appeal the issue of jurisdiction was raised and the same assertion was supported by Ms. Makaya. This prompted me to peruse the first appellate court record and found at page 3 of the judgement the following;

*'Mr. Paul Obwana for respondent argued this court to take judicial notice regarding the fact that the place where the appellant claimed his trees were cut was subject to the case filed at Kitembe Ward Tribunal between the father of the appellant and father of the respondent.'*

The trite position with respect to jurisdiction in this country is firmly settled. It is to the effect that courts must understand the scope of their powers and that discharge of their judicial functions must be within the confines of such powers. Ascertainment of the court's powers must be done before commencement of the proceedings over which they preside. Proceeding with a matter in the obliviousness of whether the court has powers is laden with profound risks. This was accentuated in the famous case of **Fanuel Mantiri**

**Ng'unda v. Herman M. Ng'unda**, Civil Appeal No. 8 of 1995 (unreported),  
in which the following guidance was laid out:

*"The jurisdiction of any court is basic, it goes to the very root of the authority of the Court to adjudicate upon cases of different nature ... the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. **It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case.**"*  
*[Emphasis supplied]*

The clear message distilled from the foregoing excerpt is that powers to handle proceedings by courts must be real, apparent and not assumed or conferred on the parties' consensual basis. It must be a creation of a statute that establishes the judicial organ or body or those that creates rights or offences. This position was underscored by the Court, in **Shyam Thanki and Others v. New Palace Hotel** [1972] HCD No. 97, this Court warned against possible 'conspiracy' by the parties to consent to give jurisdiction to a body that has none. It was held:

*"All the courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."*



In the instant appeal, parties while at the first appellate court the discussion on the court's jurisdiction raised and it was for the court to decide to accede to the respondent's prayer to have the appellant appeal against the respondents discontinued or dismissed. Parties and, with due respect, the Magistrate decide to continue with the hearing while knowing that there is land case in progress over the same disputed land in a proper tribunal. This, to my opinion cannot be left un condemn. Doing that will create bad precedent contrary to what was intended by Legislature and to the entire legal system.

As suggested by appellant, the only remedy available is revision, a power which is traced in the Magistrate Courts Act. The section reads;

*'31.-(1) In the exercise of its revisional jurisdiction under this Part, the High Court shall have all the powers conferred upon it in the exercise of its appellate jurisdiction under this paragraph including the powers to substitute a conviction or a conviction and sentence for an acquittal or an acquittal for a conviction or to make a declaratory order; and the provisions of the primary court, proviso to paragraph (b) of section 29 shall apply in relation to an order quashing proceedings and ordering a rehearing which is made in the exercise of the High Court's revisional jurisdiction as they apply in relation to any such order made in the exercise of its appellate jurisdiction.*

*(2) In addition to the provisions of subsection (1) of this section, no order shall be made in the exercise of the High Court's revisional jurisdiction under this Part in any proceedings of a civil nature, increasing any sum awarded or altering the rights of any party to his detriment (other than an order quashing proceedings in a lower court or an order reducing any award in excess of the jurisdiction or powers of a lower court to the extent necessary to make it conform thereto) unless the party adversely affected has been given an opportunity of being heard.'*

By powers bestowed to this court under S.31 of the Magistrate Courts Act, I hereby nullify proceedings of both lower courts, quash all decisions originating from those proceedings and order the a part who believe to have interest of over the piece of land concerned to institute legal proceedings in a proper forum. Costs to be borne by the appellant.

It is so ordered.



  
**M. L. KOMBA**

**JUDGE**

**04<sup>th</sup> November, 2022**