

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO

LAND APPEAL NO. 71 OF 2022

(Originating from Land Application No. 146 of 2019, the District Land and Housing Tribunal for Kilombero)

MAGE MINGA APPELLANT

VERSUS

**EGID LAZARO CHINGILILE (administrator
of the estate of the late Lazaro Chingilile)..... RESPONDENT**

JUDGEMENT

Last submission date on: 26/10/2022
Judgment date on: 14/11/2022

NGWEMBE, J.

The appellant, Mage Minga is offended by the judgment and decree delivered by the District Land and Housing Tribunal for Kilombero on 17/05/2022. The tribunal after determination of the trial, ended up deciding in favour of the respondent acting under capacity of an administrator. The two disputants are in loggerhead against a piece of land equal to $\frac{1}{4}$ an acre located at Mlimba "A" Village, Mlimba Ward in Kilombero District within Morogoro Region.

Before the tribunal, the respondent claimed that piece of land worth Tshs. 6,500,000/= belonged to his deceased father whose estate he administers. Alleged that, the appellant had trespassed into that



piece of land and commenced construction of a residential house therein.

In turn the appellant herein raised the defence of ownership by virtual of purchase. That she purchased such piece of land from Abdallah Mbwasu who also purchased it from Ditram Chingilile, one of the relatives of the respondent. The tribunal observed that, there was no dispute, the land originally belonged to the late Lazaro Chingilile who passed away in year 1996. Ditram Chingilile being not an administrator thereof, had neither authority nor capacity to sale the same. Above all had no property to sale, thus the purported sale was void. Thus ruled that piece of land be property of the deceased estate and the appellant was a trespasser.

Being so aggrieved the appellant firmly decided to challenge that judgement in this house of justice, through the legal services of Mr. Hassan Said Nchimbi of PANACEA ATTORNEYS, while the respondent was represented by learned advocate Mwansoho. Thus the appellant preferred two grounds of appeal that: -


- 1) The chairperson of the trial Tribunal erred in law and fact for delivering the opinion of assessors without the presence of assessors on the material date hence composition was not properly constituted.*
- 2) The trial tribunal erred in law for entertaining matters without having jurisdiction.*

Advocate Nchimbi in his submission in chief, argued the first ground by submitting that, on the day of delivering the assessors opinion, the coram was incomplete for the absence of assessors. He

pointed out; the chairperson purported to paraphrase the assessors' opinion when the assessors themselves were not present. He referred this court to section 23 (1)(2) of **The Land Disputes Courts Act, [Cap 216 RE 2019]** along with regulation 19 (1)(2) of **The Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003**. Above all referred this court to the case of **Hosea Andrea Mushongi (administrator of estate of the late Hosea Mushongi) Vs. Charles Gabagambi, Land Appeal No. 66 of 2021;** and the case of **Ameir Mbarak and Azania Bank Corp Ltd Vs. Edgar Kahwili [2016] T.L.R. 53** by the Court of Appeal.

The precedents and the legal provisions are in effect that, the District Land and Housing Tribunal must sit with not less than two assessors and prior to delivering its decision assessors must air their opinion, which should be read out in court in presence of both parties. The chairperson, though not bound by such opinion, he must give reasons for departure.

On the second ground, Mr. Nchimbi submitted that the tribunal had no jurisdiction to try the matter. He proceeded that, the value of the land at the time of sale was Tshs. 3,000,000/= as can be seen in the sale agreement among other exhibits. That being the case, under section 15 of **the Land Disputes Court Act**, the dispute was within the Ward Tribunal's jurisdiction. Following section 13 of the **Civil Procedure Code [Cap 33 RE 2019]** and the case of **Manjit Singh Sandhu and others Vs. Robibi, Civil Appeal No. 121 of 2014**, the rule that every suit should be instituted in the court of the lowest jurisdiction, the dispute ought to be filed before the Ward tribunal and not the District Land and Housing tribunal. To fortify this argument, he




further cited the case of **TANESCO Vs. IPTL and 2 others [2000] TLR. 324**. The learned advocate rested his submission by a prayer that the appeal be allowed with costs; the whole proceedings of the trial tribunal be quashed and the judgment therefrom be set aside.

In reply, advocate Mwansoho seriously discredited the first ground and the accompanied arguments as unfounded and irrelevant. Briefly submitted that assessors were involved from the trial to the judgment. Their opinions were taken and considered by the chairperson in his decision, referred to page 9 of the tribunal's judgment.

Facing the second ground on jurisdiction of the tribunal, the learned advocate consistently argued that, the case laws cited by the appellant's counsel, including **TANESCO Vs. IPTL** were inapplicable. Added that the **Land Disputes Courts Act** is amended by **Miscellaneous Amendment Act No. 5 of 2021**, which repealed sections 15 and 16 while amending section 13. After those amendments the Ward Tribunal remains only with powers to mediate as opposed to adjudication. The trial tribunal was correct to have determined the dispute, thus prayed that the appeal deserves a total dismissal with costs.

The essence of this appeal in line with the two grounds of appeal together with the arguments of learned counsels advanced therein, obvious the whole appeal in centred on first procedure and jurisdiction of the trial tribunal. Therefore, I will consider first proceedings of the trial tribunal together with its judgement. The purpose is to find out if at all there were any irregularities complained of by the appellant and the available legal remedy if any. The issue of jurisdiction is fundamental in



case it succeeds, the remedy would pre-empt the other grounds of appeal.

As I agree with both learned advocates, in their respective submissions, jurisdiction is a question of law and it is a creature of statute. Neither court nor party to a dispute can confer jurisdiction to the court to adjudicate a dispute. This is a fundamental principle which must not be forgotten by any court of law or tribunal.

Equally important is that, when jurisdiction is conferred by statute, nothing, but the law itself can oust such jurisdiction. It is a trite law that a court before embarking on determining any matter, it must ascertain whether it is vested with jurisdiction. Failure by the court or tribunal to ascertain its jurisdiction is fatal. Same was ruled and underscored in the case of **Sospeter Kahindi Vs. Mbeshi Mashini, Civil Appeal No. 56 of 2017, CAT at Mwanza**, where the Court held: -

"At this point we would hasten to acknowledge the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision"

The learned advocates are in a serious argument on whether or not the trial tribunal was vested with jurisdiction to determine the land dispute before it. While Mr. Nchimbi hold the grip that it did not have the jurisdiction, advocate Mwansoho stand firm to hold that it had the jurisdiction. Jurisdiction being a creature of statute, as above alluded, I



will refer to section 33 (2) of **The Land Disputes Courts Act**, it provides: -

Section 33 (2) *"The jurisdiction conferred under subsection (1) shall be limited-*

(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings"

Also, I accept what the appellant's counsel submitted along with section 13 of the **Civil Procedure Code [Cap 33 RE 2019]** and the case of **Manjit Singh Sandhu and others Vs. Robibi** (Supra) which I have followed closely, that a case should be instituted in the court of the lowest jurisdiction.

Section 15 of **the Land Disputes Courts Act [Cap 216 RE 2002]** which is also no different from the **[R.E. 2019]**, it confers jurisdiction to the Ward tribunal as follows: -

"Section 15. *Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 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"*

This court will not consider the amendment effected by **Miscellaneous Amendment Act No. 5 of 2021** for obvious reason to be disclosed in the course.

From the proceeding, I found that the application was instituted before the Ward tribunal on 14/05/2019. It followed therefore that, **Miscellaneous Amendment Act No. 5 of 2021**, which came into




operation on 11th October, 2021 would not apply as were not in place on the date of filing and even at a time of hearing of the case before the District Land tribunal. Instead, section 15 before amendment would be relevant in the circumstances of this appeal.

It follows therefore that, the pecuniary value of a disputed land not exceeding Tshs. 3,000,000/= remained within the Ward tribunal's jurisdiction. The convenient and proper jurisdiction in case of a dispute would not be a District Land and Housing Tribunal, but rather to the Ward tribunal. On this end, Mr. Nchimbi would be correct.

However, on the other hand, which is relevant to our case, Mr. Nchimbi's reasoning above would easily be faulted, not on the reasons raised by Mr. Mwansoho, which with all due respect were erroneous as well, but for a different cogent reason. In the pleadings, the value of the property was estimated to be Tshs. 6,500,000/=. Proper interpretation of the law would dictate that, facts in the pleadings are the ones to govern test of the courts' pecuniary jurisdiction and not from the testimonies and exhibits to be tendered later during trial.

In some occasions this court ruled to the effect that, where a land was purchased, the purchase price in the agreement should be presumed to be the value of that land, if there is no valuation report. See the case of **Alphonse Kakweche Mgainamba Kihakwi Vs. Bodiya Wadhamini BAKWATA, Land Appeal No. 97 of 2019. Though such decision is not binding upon this court, yet to depart from it I have to have good reason. Yet, I am determined to depart therefrom, for obvious reason that, neither the presence of valuation report is necessary to establish pecuniary jurisdiction of land tribunal, nor the purchase price be presumed as the current value of the**




land, but if the plaintiff has estimated the value in his plaint (application) the court or tribunal should take it as a correct value of the suit land which will be subject to proof by evidence on trial.

In the contrary, where there is no estimate value in the plaint/application and a sale agreement is annexed, such price presumption may be reasonable. Also, that where value of the property and pecuniary jurisdiction of the tribunal are altogether in issue, valuation report may be adduced to disprove jurisdiction against the estimated value and not to prove pecuniary jurisdiction of the court or tribunal. In this dimension, the parties would suffer a great deal if they were to secure valuation report before instituting each suit. Otherwise, at least I am satisfied that in this case, neither valuation report nor sale agreement would play any role in ascertaining pecuniary jurisdiction than what is pleaded by the parties.

This court in the case of **Francis Andrew Vs. Kamyn Industries (T) Ltd [1986] T.L.R 31**, interpreted section 13 of The Civil Procedure Code, categorically ruled that, to ascertain pecuniary jurisdiction of the court, it is the body of the plaint that is referred, and not the reliefs sought in that plaint. This is the underlying position of the law and has been in place ever since and it should apply also in the cases like this at hand.

Alternatively, the issue of the value of the land in dispute was not raised at trial. Despite the fact that the appellant raised a preliminary objection on some other points, he did not raise any question on the value of the land and jurisdiction. Much as I agree with the general rule that the issue of jurisdiction can be raised at any stage as ruled in **PR Muganga Henry Vs. Said Boramungu [2004] T.L.R 198**, I am of




the view that, the question of value of the disputed land was fit to be raised at trial. Following the rule in **Hotel Travertine Limited & 2 Others Vs. National Bank of Commerce [2006] TLR 133** that: -

"As a matter of general principle, an appellate court cannot allow matters not taken or pleaded in the court below, to be raised on appeal"

Also paying consideration to the recent decision of **INDO African Estates Limited Vs. Kangolanje Hassani & Others, Civil Appeal 13 of 2022, CAT Mtwara**, partly similar to the case at hand, questions concerning the value of the land not raised at the trial court cannot be dealt with at the appeal. This ground would otherwise deserve no significant consideration, and in this case, it stands to be weaker.

As the respondent estimated the value of the disputed land to be Tshs. 6,500,000/=, it was proper and I think reasonable on his side considering the nature of cause of action and the circumstances and that actual precise value of the land had no much significance in determining the dispute. By the test we have set herein above, the trial tribunal was correct to find that the matter was within its jurisdiction. I thus dismiss this first ground for having no merit.

In the second ground, the appellant's counsel alleged that the tribunal did not comply with Sections 23 and 24 of **The Land Disputes Courts Act** and Regulation 19 (2) of **GN. 174 of 2003**. This court has considered those provisions with good precedents cited by the learned advocates that is, **Hosea Andrea Mushongi's** case and **Ameir Mbarak and Azania Bank Corp Ltd** together with others cases like **Emmanuel Oshoseni Munuo Vs. Ndemaeli Rumishaeli Massawe,**




Civil Appeal No. 272 of 2018 and Tubone Mwambeta Vs. Mbeya City Council, Civil Appeal no. 287 of 2017. Without reservation, the above requires that in the hearing, the tribunal must sit with assessors who shall give their opinions and same must be considered in judgment. Failure to follow these legal requirements is a fatal irregularity, which will result to nullification of the proceedings by the superior court.

After scrutiny on the tribunal's proceeding and its judgment, I accept what Mr. Mwansoho submitted that no procedure was contravened by the trial tribunal. I have verified that the assessors' respective opinions were given in writing on 25/01/2022 and on 26/01/2022 the said opinions were read out before the tribunal in the presence of parties Messrs Mwansoho and Bageni Elijah, learned advocates for the respondent (applicant) and appellant (respondent) respectively. The judgement was delivered on 17/05/2022 in presence of parties. The chairperson rightly considered the assessors' opinions.

From the above, I find no error made by the trial tribunal. Mr. Mwansoho's written submission disclosed that he was shocked by the appellant's raising this ground. Equally, this court is puzzled, to find this issue is raised while parties from the beginning were represented by learned advocates. For that reason, I dismiss this ground as well.


It may be helpful to observe herein that where a ground of appeal contends that some procedures were not followed or some act or omission were conducted by the trial court, it is expected for the appellant to establish that the same really happened or at least to be reflected on the record. In this case, there was no point for the appellant's counsel contending matters contrary to what the proceedings reflected. Raising grounds from the vacuum may, in some cases be not



only comical but also syphoning the valuable resources of the court, his client and the adverse party. It is important that advocates should study the clients' case before taking the very first step and in the course of prosecuting the appeal or whichever remedy, he must be diligent upholding all the values of the professional etiquettes to assist both, the client and the court.

By standing steadfast to their respective duties, both advocates and the courts will avoid or at least minimize some disputes. Despite the fact that right to appeal is generally automatic, some appeals like this one would have been avoided. I have taken heed of the good reasoning in the cases of **Joseph Magata Vs. VODACOM T. Limited, Civil Appeal 220 of 2019 (CAT at Dsm)** and **Mohamed Iqbal Vs. Ezrom M. Maryogo, Civil Application 141 of 2018, (CAT at Dsm)**, which I wish to adopt. In the latter it was held *inter alia*: -

"We must emphasize that an advocate, in addition to being a professional, is also an officer of the Court and prays a vital role in the administration of justice. An advocate is therefore expected to assist the Court in an appropriate manner in the administration of justice. Indeed, one of the important characteristics of an advocate is openness in different ways to share to the court the relevant information or message which comes to his attention either from his client or his colleagues concerning the handling of the case regardless of whether he has been requested by the court to do so or not"



As above observed, it seems to the court that, the appellant's advocate having considered that the decision of the trial tribunal was in substance correct, did not have any complaint against the judgment in

substance. It was not of any help to raise allegations on procedural irregularity which were not concrete.

Having reasoned and ruled on each of the grounds above, this court finds no merit in the appeal and thus dismisses it entirely. I have considered the circumstance of this case and I award costs be payable to the respondent as prayed.

I accordingly Order.

Dated at Morogoro this 14th day of November, 2022.



P. J. NGWEMBE

JUDGE

14/11/2022

Court: Judgment delivered at Morogoro in Chambers on this 14th day of November, 2022, **Before Hon. J.B. Manyama, AG/DR** in the presence of Mr. Nchimbi the learned Advocate for the Applicant and the absence for Respondent.

Right to appeal to the Court of Appeal explained.

SGD. HON. J.B. MANYAMA

AG/DEPUTY REGISTRAR

14/11/2022

