

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 17 OF 2022

(Originating from the District Land and Housing Tribunal for Manyoni at Manyoni in Land Appeal Case No. 9 of 2021 which arose from Sanjaranda Ward Tribunal.)

SARA MAOPE TUBEJI.....APPELLANT

VERSUS

JOHN PAULO LWANJI..... RESPONDENT

JUDGEMENT

Date of Last Order: 20/10/2022

Date of Judgment: 29/11/2022

Mambi, J.

This judgment emanates from an appeal lodged by the appellant **SARA MAOPE TUBEJI**. It was the appellant who unsuccessfully sued the respondent at the Sanjaranda Ward Tribunal over trespass to her land. Aggrieved with the decision of the Ward Tribunal she appealed to the District Land and Housing Tribunal for Manyoni (the 'DLHT'). The

appellant lost her appeal. Dissatisfied once again she has appealed before this Court relying on three grounds of appeal. These are: -

- 1. The appellate tribunal erred in law by upholding a decision of the Sanjaranda Ward Tribunal which was entered without having jurisdiction to entertain the matter.*
- 2. The appellate tribunal erred both in law and fact in entertaining a decision of the Sanjaranda Ward Tribunal which was entered while the Tribunal was inexistent and operating without legal mandate.*
- 3. The appellate tribunal erred in law by holding that there were no procedural irregularities in the proceedings of the Sanjaranda Ward Tribunal.*

The respondent in his reply to the memorandum of appeal he appraised the decision of the DLHT in upholding the decision of the trial Ward Tribunal.

During the hearing the appellant enjoyed the legal services of the learned advocate Mr. Frederick Msumali whereas the respondent appeared unrepresented.

Submitting for the appellant, Mr. Msumali, on the first ground of appeal, faulted the DLHT decision for ignoring the fact that the trial Ward Tribunal lacked jurisdiction for entertaining the land dispute which had the value of more than three million shillings. The learned counsel backed his argument with the decision of the court in **Said Mohamed Said vs Muhusin Amiri and Another**, Civil Appeal No. 110 of 2020.

On the second ground of appeal, the learned counsel for the Appellant, Mr. Msumari contended that the tenure of the Ward Tribunal is three years which by 2021 had already expired. The appellant counsel was of the view that the trial Tribunal had no power to entertain the matter.

Lastly Mr. Msumari submitted that the trial Tribunal did not visit the suit land.

On his part the respondent contended that before the amendment of the law No. 3 of 2021, the Ward Tribunal had jurisdiction. The respondent further submitted that it was the appellant's witness who testified that the suit land was 12 acres while it was 6 acres only. The respondent also submitted that the Ward Tribunal visited the suit land and satisfied itself that it was 6 acres.

In respect of tenure of the trial Tribunal, the respondent submitted that the tenure of the trial Tribunal was still valid. The respondent wondered as to why the appellant sued him at the trial Tribunal if at all its tenure had expired.

Before addressing other grounds of appeal and submissions, I wish to first address the issue of jurisdiction raised by the appellant. The main issue is whether the trial Ward Tribunal was properly vested with pecuniary jurisdiction to entertain the land dispute before it.

The appellant at the DLHT addressed the issue of jurisdiction of the Ward Tribunal over the suit land. In its decision the DLHT at page 5 held as follows;

".....it is trite principle of law that, to prove pecuniary jurisdiction needs a valuation..... In the same issue the appellant's counsel introduced a value of the suit area but this is new evidence which cannot be used as submission of the appeal....."

The question which arises is, was the DLHT right in its decision?

As indicated above it was the appellant who sued the respondent at the trial Ward Tribunal. The complaints of the applicant/appellant at the trial Ward Tribunal as can be seen in the records are as follows;

'Mimi malalamiko yangu ni SHAMBA. Huyu kijana wangu, nataka kurudisha shamba. Siku za nyuma alienda kukata shamba langu bila kunishirikisha, na baadae nilimuuliza kwa nini umekata shamba langu bila kunishirikisha? Amekuwa akilima kila miaka. Amekuwa akikata tu kila mara mimi sina shida kubwa, Anirudishie shamba lang tu,.....'

Facts from the records speaks for themselves. In the phrase above there is nowhere the applicant stated the location, size and value of the suit land. The trial Ward Tribunal having admitted the claims it went on entertaining a matter, visiting the suit land and it finally made a decision. The question which comes in my mind is how did the Ward Tribunal know that it had a requisite pecuniary and geographical jurisdiction over the matter? Now, when the very applicant/appellant upon failure in her case raises the issue of jurisdiction in appeal does it become new evidence or was the DLHT right in dismissing the appeal on ground that it was a new fact as it was not raised at the trial Tribunal?

I am of the strongest view that the answer is no. This is due to the fact that the issue of jurisdiction is a matter of law and not of fact. That being the case, then it follows that even if the issue of jurisdiction was not raised by any of the parties in a case, the DLHT should have stepped onto it *suo mottu*. It is trite law that issues of jurisdiction need to be stated by a party suing at the outset such that the court or any decision-making body can ascertain its legal authority on the matter before it. The court or the tribunal has also the duty to ascertain jurisdiction before commencing any proceeding. However, when the court or any decision-making body becomes aware of it at any stage of the proceedings, it has address it before going further. In the decision cited by the appellant's learned counsel of **Said Mohamed Said** *supra*. The Court of Appeal at page 12 stated;

*'Times without number this Court has maintained that **jurisdiction is the first issue the court should ask itself before acting on any matter placed before it for determination**'.* Emphasis supplied.

Reference can also be made on the decision of the court in **Tanzania Revenue Authority vs Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported). The Court of Appeal in this case stated that: -

'Principally, objection to the jurisdiction of a court is a threshold question that ought to be raised and taken up at the earliest opportunity, in order to save time, costs and avoid an eventual nullity of the proceedings in the event the objection is sustained.

*The law is well settled and Mr. Bundala is perfectly correct **that a question of jurisdiction can be belatedly raised and canvassed even on appeal by the parties or the court suo moto**, as it goes to the root of the trial (See, Michael Leseni Kweka; Kotra Company Ltd; New Musoma Textiles Ltd. Cases, Supra). Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests.'* Emphasis supplied.

Basing on the circumstances of this case, the DLHT was] required to invoke its revisionary powers by revising the decision of the trial Tribunal and nullify its proceedings, decision and orders made thereof. Unfortunately, in the present case, despite being raised, the learned Chairman did not wish to address the issue of jurisdiction to which he was obligated to consider even by raising it *suo mottu*. That was, in my considered view, an error which cannot be condoned at any rate.

Having observed those irregularities as moved by the appellant, this court needs to use its powers vested under the legal provisions of the law. Indeed, this court is empowered to exercise its powers under

section 43 of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] to revise the proceedings of the District Land and Housing Tribunals if it appears that there has been an error material to the merits. Indeed section 43 (1) (b) the Land Disputes Courts Act provides that;

"In addition to any other powers in that behalf conferred upon the High Court, the High Court,

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit.

The underlying object of the above provision of the law is to prevent subordinate courts or tribunals from acting arbitrarily, capriciously and illegally or irregularly in the exercise of their jurisdiction. See ***Major S.S Khanna v. Vrig. F. J. Dillon, Air 1964 Sc 497 at p. 505: (1964) 4 SCR 409; Baldevads v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201: AIR 1970 SC 406.*** The provisions cloth the High Court with the powers to see that the proceedings of the subordinate land tribunals are conducted in accordance with law within the bounds of their jurisdiction and in furtherance of justice. This enables the High Court to correct, when necessary, errors of jurisdiction committed by subordinate courts and provides the means to an aggrieved party to obtain rectification of non-appealable order. Looking at our law there is no dispute that this court has power to entail a revision on its own motion or *suo moto*. The court can also do if it is moved by any party as done in this matter at hand. Basing on the records of both the trial and

appellate tribunal, this Court has decided to revise the decision of the DLHT.

Looking at the records, I am of the settled mind that this court has satisfied itself that there is a need of revising the legality, irregularity, correctness and propriety of the decision made by the appellate Tribunal.

Having established that in this case, the appellate Tribunal has failed to follow the legal principles that renders the proceedings and judgment incompetent, the question is, if this Court orders for retrial or trial denovo will this cause injustice to any party to the case? I wish to refer the decision of court in ***Fatehali Manji V.R, [1966] EA 343***, cited by the case of ***Kanguza s/o Mchemba v. R Criminal Appeal NO. 157B OF 2013***. The Court of Appeal of East Africa restated the principles upon which court should order retrial. The court observed that: -

*"...in general a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow that a retrial should be ordered; each case must depend on its particular facts and circumstances and an order for retrial should only be made where **the interests of justice require it and should not be ordered where it is likely to cause an injustice to the parties...**"*

In my considered view, there is no any likelihood of causing an injustice to any party if this court orders the remittal of the file for the DLHT to properly deal with the matter immediately.

For the reasons given above, I nullify the proceedings and judgment of the appellate Tribunal (the DLHT) in Land Application No. 9 of 2021 and the decree made thereto. This matter is remitted to the District Land and Housing Tribunal to be freshly determined. Given the circumstances of this case, this court orders the matter be heard *de novo* by the same the District Land and Housing Tribunal but chaired by a different Chairperson. The DLHT should determine the issue of jurisdiction and make an appropriate order or decision. Where it appears, the same Tribunal has no more than one Chairperson, the chairperson from other nearest Tribunal within Singida region should be assigned this case. If the parties are interested to proceed prosecuting their case, they should all be summoned to appear before the DLHT within reasonable time. Having observed that the proceedings at the DLHT were tainted by irregularities and then nullifying them, I find no need of addressing other grounds of appeal. No order as to the costs.

Order accordingly.



A. J. MAMBI

JUDGE

29/11/2022

Judgment delivered in Chambers this 29th day of November, 2022 in presence of both parties.



A. J. MAMBI

JUDGE

29/11/2022

Right of appeal explained.



A handwritten signature in blue ink, consisting of several overlapping loops and lines.

A. J. MAMBI

JUDGE

29/11/2022