

IN THE HIGH COURT OF TANZANIA

TABORA DISTRICT REGISTRY

AT TABORA

MISC. LAND CASE APPEAL NO. 15 OF 2020

(Arising from the District Land and Housing Tribunal for Nzega in Land Appeal No. 77/2019 date 26/3/2020 and the original decision of Sigili Ward Tribunal in Probate Case No. 01/2019)

KUBILU SULULUAPPELLANT

VERSUS

MHINDI SHIJA.....RESPONDENT

.....
JUDGEMENT
.....

Date of Last Order: 21/10/2022

Date of Delivery: 12/12/2022

AMOUR S. KHAMIS, J.

This is the second appeal for a dispute that originated in the Sigili Ward Tribunal, Nzega District, Tabora Region.

In the Ward tribunal, Mhindi Shija, the respondent herein, complained against his cousin, Kubilu Sululu, for trespassing onto his late mother's farms.

Upon trial, the Ward tribunal declared Mhindi Shija as the lawful owner of the disputed parcels of land.

On appeal by Kubilul Sululu, the District Land and Housing Tribunal for Nzega upheld the Ward Tribunal's decision and dismissed the appeal with no order for costs.

Aggrieved, Kubilul Sululu landed in this Court with two grounds of appeal, namely:

1. That the Honorable Ward Tribunal erred in law and in fact for entertaining and determining the land in dispute without having jurisdiction to entertain the case.
2. That the District Land and Housing Tribunal erred in law for refusal to admit the important evidence which was not admitted in the ward tribunal while it has powers to do so.

Before me, Mr. Edward Malando and Mr. Langa Mvuna, learned advocates, appeared for the appellant while Ms. Stella Nyakyi, learned advocate, represented the respondent.

With parties consent hearing proceeded by way of written submissions and both counsel timely presented their written arguments.

The appellant's submissions were drafted and presented by Mr. Langa Mvuna, learned advocate while Ms. Stella Thomas Nyakyi, actively took charge of the respondent's portfolio.

Mr. Mvuna contended that the trial ward tribunal did not satisfy itself on whether it had requisite jurisdiction to entertain the dispute.

He asserted that the ward tribunal's pecuniary jurisdiction is limited to Tshs. 3,000,000/= and submitted that the tribunal ought to have warned itself on the same.

On the other hand, Ms. Nyakyi contended that there was no valuation report to ascertain on whether the disputed land exceeded the value of Tshs. 3,000,000/=.

She implored on this Court to adopt the Court of Appeal stance in ***YAKOBO MAGOIGA GICHERE V PENINAH YUSUPH, CIVIL APPEAL NO. 55 OF 2017*** wherein the Court of Appeal held that the Court should not read additional procedure technicalities into the simple and accessible way ward tribunals in Tanzania conduct their daily businesses.

Both counsel refrained from addressing me on the second ground of appeal suggesting that the same was abandoned.

Therefore, the only issue for consideration in this appeal is whether the trial ward tribunal was clothed with requisite pecuniary jurisdiction to entertain the parties' dispute.

There is no dispute that the pecuniary jurisdiction of the ward tribunal in adjudication of land cases before the recent amendments that left it with mediatory role was limited to Tshs. 3,000,000/=.

Section 15 of the ***LAND DISPUTES COURTS ACT, CAP. 216, R.E 2019*** provides that:

“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”.

Having gone through the entire records, I noticed that neither in the ward tribunal nor in the District Land and Housing Tribunal, was the issue of pecuniary jurisdiction discussed. This issue cropped up for the first time in this appeal.

Pecuniary jurisdiction is the power or authority of the Court to entertain a claim based on its monetary value.

It is trite law that jurisdiction of the Court or tribunal is neither conferred by the parties, judge, magistrate or presiding officer, but rather, it is a statutory conferment.

Whenever a suit or dispute is presented to Court or tribunal, the initial step is to determine whether that forum has jurisdiction to deal with the matter.

If the Court has all the three aspects of jurisdiction: territorial, pecuniary or subject matter jurisdiction then it is vested with powers to deal with the case.

If the Court or tribunal lacks any of the three aspects, then it will be regarded as lacking jurisdiction.

It is also an established legal stance that when determining pecuniary jurisdiction of the Court or tribunal, it is the value of the subject matter in dispute that has to be ascertained.

The starting point on ascertaining value of the subject matter is the parties pleading and any other relevant document annexed to it.

Such documents attached to the pleadings could be a sale agreement(s), loan agreements, mortgages, affidavit, correspondences or valuation report specifically prepared in respect of the property.

In JOHN LUBEGA & PAUL MBOGO V UGANDA BROADCASTING CORPORATION & ROBERT KAGORO, MISC. CIVIL APPLICATION NO. 589 OF 2019 (Unreported), the High Court of Uganda at Kampala held that:

“Further, that parties are bound by their pleadings and that the applicants only pleaded UGX 7, 193,100/= as amount claimed which falls within the jurisdiction of a magistrates Court.....”

In the present case, records show that parties presented their letters or written position on the dispute before the trial ward tribunal which documents disclosed nature of their respective cases.

Records also show that on 2nd day of September, 2019, Mhindi Shija wrote a letter to the ward tribunal initiating the dispute.

On the same date, Kubilu Sululu responded by disputing the allegation levelled against him.

Thereafter, the matter was subjected to trial which saw testimonies of five witnesses for the appellant and four (4) witnesses for the respondent, Mhindi Shija (including himself).

Neither letters written by the parties nor oral testimonies by these witnesses mentioned or disclosed value of the disputed farm (s).

Records further show that at no point in time was the valuation report considered necessary in the dispute or produced to show value of the disputed farm(s).

In view of Section 13 of the **CIVIL PROCEDURE CODE, CAP 33, R.E 2019**, I have no reason to doubt that the parties' dispute was not presented to the lowest grade of the hierarchy of bodies competent to determine land disputes in the area.

In the circumstances, I find no merits in this appeal which is hereby dismissed.

I refrain to order for costs in view of the parties blood relationship.

It is so ordered.




AMOUR S. KHAMIS

JUDGE

12/12/2022

ORDER

Judgement delivered in Chambers in presence of Ms. Stella Nyakyi, advocate for the respondent and also holding brief of Mr. Langa Mvuna, advocate for the appellant.

Right of Appeal is explained.



AMOUR S. KHAMIS

JUDGE

12/12/2022