

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

CIVIL APPEAL NO. 61 OF 2022

ATHANASIA TABU MASSINDE APPELLANT

VERSUS

NGOILA T. MOLETO 1ST RESPONDENT

WILLIAM T. MOLETO 2ND RESPONDENT

**(Appeal the decision of the Resident Magistrate Court of Kibaha
at Kibaha in Civil Case No. 1 of 2022)**

JUDGMENT

1st November & 2nd December, 2022

KISANYA, J.:

The appellant is the losing party in the suit lodged in the Resident Magistrate's Court of Kibaha at Kibaha. He was aggrieved and has appealed to this Court to challenge the decision of the trial court.

Brief facts of the case which led to this appeal is deduced from the pleadings filed in the trial court. It was alleged in the amended plaint that the appellant was the lawful owner of a farm land measuring forty (40) acres, located at Ngwala Village in the Ward of Gwata within Kibaha (henceforth "the farm land"). She further averred to have found the respondents' cattle eating and destroying crops and damaging her farm land. As the matter was not resolved amicably, the

appellant sued the respondents jointly and severally praying for the following reliefs:

- 1. The declaration that the defendants jointly and severally trespassed to the land of the plaintiff by cattle and destroyed crops and other commercial plants.*
- 2. ... an order that the Plaintiff be paid a total of Tanzania Shillings 18,510,178.5/= being the loss she suffered and costs she incurred following the trespass by the cattle stated above.*
- 3. Payment of general damages to be determined by the Court.*
- 4. Interest at 7% per annum on the decretal amount from the date of judgment to the date of full payment.*
- 5. Costs of the suit.*
- 6. Any other relief the court may deem fit and just to grant.*

On the other hand, the respondents denied the appellant's claim. Neither did they admit nor deny the fact that the appellant owned the stated farmland. The respondents put the appellant into strict proof thereof. They also claimed that their cattle did not trespass into the appellant's farm land.

In view of the pleadings, the trial court framed four issues for its determination. The first two were to the following effect:

- 1. Whether the plaintiff owns a farm at Ngwala Village.*
- 2. Whether the defendants' cows entered into the plaintiff's farm and destroy (sic) crops so as other commercial plants.*

At the end of the trial, the trial court resolved the first issue in the affirmative, while the second issue was answered in the negative. In consequence, the appellant was held to have failed to prove her claim. Thus, her suit was dismissed with no order as to costs.

That decision was not well received by the appellant. She expressed her grievance by lodging the present appeal. For the reasons which will be apparent later, I need not reproduce the grounds of appeal advanced in the petition of appeal.

With leave of the Court, this appeal was heard by way of written submissions. Before the hearing of the appeal commenced, I directed the parties' counsel to address the Court on whether the trial court had jurisdiction to entertain the matter before it.

Having considered the record and written submission filed by the parties, I am of the view that this appeal can be disposed of basing the issue raised by the Court, *suo motto*.

Responding to the issue raised by the Court, the appellant's counsel, Mr. Hamis Katundu submitted that the suit was based on trespass by cattle into the appellant's farm. It was his considered view that the trial court had jurisdiction to try the matter on the account that, trespass by cattle is a common law tort

actionable in law. The learned counsel admitted that the trial court framed the issue whether the appellant owns a farm land at Ngwala Village. He further admitted that the said issue was framed because the respondents disputed the facts averred in the plaint. However, he was of the view that the trial court did not determine the land dispute merely because it addressed the said issue. His contention was premised on the reason that the respondents expressed no interest over the land.

On his part, Mr. Dominicus Nkwera, learned advocate for the respondents was not in agreement with Mr. Katundu. He submitted that the trial court had no jurisdiction to determine whether the appellant owned any piece of land. Making reference to the provisions of sections 33(1)(a) and (b) and 37(1)(a) and (b) of the Land Disputes Courts Act, Cap. 216, R.E. 2019 (the LDCA), Mr. Nkwera argued that the jurisdiction on the matter lodged before the trial court is vested with the District Land and Housing Tribunal (henceforth "the DLHT").

In his rejoinder, Mr. Katundu submitted that the cause of action was tort of negligence which involved trespass by cattle. He reiterated his submission in chief that trespass by cattle is a common law tort actionable by law and the trial court was vested with jurisdiction to try the same. He further reiterated that the trial court was inclined to frame the issue on ownership of the farm land because the

respondents disputed that the appellant was the lawful owner of the said farm land.

To begin with, it is trite law, and I need to cite any authority, that the jurisdiction of the court is statutory and emanated from the statute. It is further settled that the issue of jurisdiction goes to the root of the case and hence, capable of being raised at any stage of the case, including appellate level. Further to this, the proceedings by a court which has no jurisdiction to try the matter are a nullity. See the case of **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (unreported)) when the Court of Appeal underlined that:

"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. We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction."

In the present appeal, I agree with Mr. Katundu, that the appellant's suit was based on tort of trespass. However, it is common ground, as depicted from paragraph 3 of the plaint, that the cause of action was premised on the ground that the appellant was the lawful owner of the farm land subject to tort of trespass. As admitted by Mr. Katundu, the respondents disputed the appellant to be the

lawful owner of the farm land. For that reason, the appellant and respondents were at issue on whether the appellant owned the farm land. That is why the trial court framed the foresaid issue. It went on answering it in the affirmative after considering the evidence adduced by both parties. That is when the issue whether the trial court had jurisdiction to determine whether the appellant owns the farm land arises.

In terms of section 167 of Land Act, Cap. 113, R.E. 2019, section 62 of the Village Land Act, Cap. 114, R.E. 2019 and section 3(1) and (2) of the LDCA, the mandate to determine land dispute is vested in the Village Land Council, Ward Tribunal, DLHT, High Court, Court of Appeal of Tanzania. It is also provided for under section 4(1) of the LDCA that the courts established by the Magistrates' Courts Act [Cap. 11, R.E. 2019) have no civil jurisdiction in any matter related to land.

Now that the appellant and respondents were at issue on whether the appellant owned a farm land which formed the basis of a cause of action for tort of trespass, I entirely agree with Mr. Nkwera that the Resident Magistrate's Court of Kibaha had no jurisdiction to entertain the matter. On the foregoing reasons, I hold that the proceedings, judgment and decree subject to this appeal are a nullity.

In the event, I am inclined to exercise the revisionary powers bestowed on this Court, as hereby do, nullify the proceedings of the Resident Magistrate's Court

of Kibaha, quash the judgment, set aside the decree thereon. Consequently, this appeal is hereby struck out for emanating from the nullified proceedings. The appellant is at liberty to institute the matter in a court of competent jurisdiction, but subject to the time limitation. I make no order as to costs because the appeal is disposed of based on the issue raised by the Court, *suo motto*.

It is so ordered.

DATED at **DAR ES SALAAM** this 2nd day of December, 2022.



A handwritten signature in blue ink, appearing to read "S.E. Kisanya".

S.E. KISANYA
JUDGE