

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI**

LAND APPEAL NO. 24 OF 2022

(From the Decision of the District Land and Housing Tribunal of Moshi District at Moshi,
in Application No. 210 of 2019)

BODI YA MAJI MTIRIRIKO KIRUA KAHE APPELLANT

VERSUS

PROSPER REMMI MOSOFE RESPONDENT

JUDGMENT

Last Order: 04/10/2022
Judgment: 04/11/2022

MASABO, J.:-

This appeal emanates from the District Land and Housing Tribunal of Moshi at Moshi (DLHT). The respondent had sued the appellant for trespassing into his two pieces of land one measuring 2 acres situated at Mbarawa and another measuring 240m situated at Loula all within Uchira area in Moshi District (suit lands) and for constructing water tanks and pipelines therein. The appellant claimed no liability. Asserting no right over the disputed land, the water tanks and the pipelines, the appellant averred that she was wrongly sued as she is a mere invitee. She was contracted only to supply water to the people of Uchira by the Uchira Water Users Association and by then the water tanks and pipelines had been constructed. Thus, the trespasser if any, is the Uchira Water Users Association, not her. At the

conclusion of the trial. the trial tribunal declared the respondent a lawful owner of the suit land. Subsequently, it ordered an assessment of the suit land so that the respondent could be thoroughly compensated. It also ordered a compensation to a tune of Tshs. 50,000,000/=. Disgruntled, the appellant preferred this appeal armed with the following four grounds of appeal;

1. That, the trial tribunal chairman erred in law and fact in not considering the agreed issues and determined the issues which were not raised;
2. That, the trial tribunal chairman erred in law and fact in not considering properly the evidence tendered during trial;
3. That, the trial tribunal chairman erred in law and fact in not considering the contents of the judgment provided by the law; and
4. That, the trial tribunal chairman erred in law and fact in determining the preliminary objection which was never raised by the appellant.

During hearing of this appeal Mr. John Masangwa, the learned counsel who represented the appellant started by praying to abandon the 4th ground. He then proceeded to submit on the 2nd ground of appeal that the trial tribunal chairman failed to assess the evidence tendered by the respondent and the appellant. He argued that the dispute was over ownership of the suit land. Thus, the respondent ought to have led evidence on his ownership of the same but the only evidence he produced was a demand notice which was admitted as Exhibit P1 and his oral testimony that he acquired ownership through inheritance. There was nothing else to corroborate his assertion.

Regarding the allegations as to trespass, it was contented that the appellant was not the one who trespassed on the land as vividly shown in the contract between her and Uchira Water Users Association which was admitted as Exhibit D2. In the circumstances, the purported trespass if at all existed was never established by the respondent as Exhibit D2 clearly shows that he sued a wrong person. The learned counsel further argued that the trial chairman failed to assess the evidence. Had he fairly assessed it, he could have made a different decision. To fortify his assertion, he cited the case of **Charles Issa vs. Republic, Criminal Appeal No. 97 of 2019** (unreported) which emphasized on proper evaluation of evidence by trial court as a mandatory duty.

On the 1st ground of appeal, the learned counsel argued that, the chairman failed to determine the issues framed by the parties in the course of the proceeding. As per the proceedings, the issues were framed on 02/06/2022 and on 28/07/2020, the appellant proposed an addition of one issue, that is whether the application was time barred. On 16/09/2020, the trial tribunal approved the proposal and directed that the new issue will be included in the issues to be determined. By its very nature, the added issue ought to have been determined first after closure of the trial. However, the trial tribunal did not thoroughly consider this issue. Expounding the merit of the new issue, the learned counsel argued that, as per the demand notice which was admitted as Exhibit D1, the dispute between the parties started in 2001 which is approximately 20 years to the date of filing the application contrary to Law of Limitation Act, Cap 89 R.E. 2019, which sets out a time limitation

of 12 years. He added that, the decision of the DLHT does not disclose the issues determined and for this reason, the trial chairman proceeded to award 50,000,000/= as compensation without a single proof of the said sum contrary to the trite law that special damages must be specifically proved as per **FINCA Microfinance Bank Ltd. vs. Mohamed Omary**, Civil Appeal No. 26 of 2020 (unreported).

As to the last ground, Mr. Masangwa submitted that, Rule 20 (1) (a) to (b) of **Land Dispute Court (the District Land and Housing Tribunal) Regulation of 2002**, G.N No. 174/2002 provides guidance on how the judgment of the tribunal should be drafted and gives directives which shows the components of the award. He argued that, the impugned judgment offended the law as the seven paged judgment goes completely contrary to the Rules above as it does not provide facts of the case, analysis of evidence and even the issues raised. He prayed that this court find the appeal meritorious, quash and set aside the judgment and decree of the DLHT and allow the appeal with costs.

Disputing the appeal Mr. Mambo, learned counsel for the respondent, submitted that the first two grounds of appeal lack merit as there was no dispute over ownership of the suit land. Throughout his defence, the appellant stated that the suit land was not hers. Whilst shifting the blame to Uchira Water Users Association as the actual trespasser, she disputed to have trespassed into the suit land. Mr. Mambo proceeded that the law requires that civil cases be proved on the balance of probabilities. In the present case, there was an admission by which the respondent's case was

impliedly proved. In paragraph 6 of the Written Statement of Defence the appellant did not dispute his operations in the suit land. As this was tantamount to an admission, there was no need for further proof. Having admitted his presence in the suit land to which he is not the owner, the appellant cannot deny responsibility. As to the authority in **Charles Issa vs. Republic** (supra), it was argued that it is distinguishable as, contrary to the present case, in the cited case, the trial court disregarded the evidence of one of the parties whereas in the present case, the tribunal analyzed and considered all the evidence.

On the second ground of appeal regarding determination of the issues raised, Mr. Mambo argued that the same were discussed at page 3 of the judgment, He also argued that evidence tendered, including Exhibit D1 was thoroughly evaluated. Thus, there is nothing to fault the DLHT. As for special damages, it was the learned counsel's submission that, the position that special damages need be strictly proved is correct and in the present case, the respondent ably proved the claim of Tshs. 50,000,000/= as special damages through her witnesses. Hence, the DLHT's decision cannot be faulted.

On the last ground of appeal, it was submitted that, the judgment of the trial tribunal is in accordance with the law as it contains statement of facts and reasons for the decision. He invited the court to look at page 2 and 3 of the judgment to see how evidence was analyzed and fully evaluated. He finally

submitted that, there is nothing to fault the DLHT's decision and prayed that the appeal be dismissed for want of merit.

In his brief rejoinder, Mr. Masangwa reiterated that the appellant was only invited to the suit land to supply water to the tanks constructed by Uchira Water Users Association who is the owner of the suit land.

Having considered the DLHT's records as well as the submission by both parties, I will now determine the grounds of appeal starting with the first one on the issues for determination. It is a well-settled principle that, a decision should be based on the issues which are framed by the court and agreed upon by the parties. The failure to observe this principle is pregnant with miscarriage of justice, hence fatal. This position was fortified by the Court of Appeal in **Hood Transport Company Limited Vs. East African Development Bank, Civil Appeal No. 262 of 2019**, CAT at Dsm (unreported); **Alisum Properties Limited vs. Salum Salenda Msangi** (As Administrator of the Estate of the late Selenda Ramadhani Msangi), Civil Appeal No. 39 of 2018, CAT at DSM (unreported), and in a plethora of other decisions of the apex court. In **Alisum Properties Limited vs. Salum Salenda Msangi** (supra), the Court held that;

"It is an elementary principle of law that an issue raised by the parties should be resolved. Therefore, the trial court is required and expected to decide on each and every issue before it, hence failure to do so renders the judgment defective. We are supported in that position by the cases of **Alnoor Shariff Jamal v. Bahadir Ebrahim Shamji**, Civil Appeal No. 25 of 2006 (unreported) which quoted with approval a Kenyan case of **Kukal Properties Development Ltd v. Maloo and**

Others (1990) E.A. 281 when faced with a similar situation, it stated that, *"A judge is obliged to decide on each and every issue framed, failure to do so constitute a serious breach of procedure."*

Further, in terms of land matters, Regulation **20 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN No. 174 of 2003 reads;

"20.-(1) The judgment of the Tribunal shall always be short, written in simple language and shall consist of:
(a) a brief statement of facts;
(b) findings on the issues;
(c) a decision; and
(d) reasons for the decision."

In the present case, the records show that the DLHT raised and recorded four issues as agreed upon by the parties. Later on and as correctly submitted by the appellant's counsel, one issue was added making a total of the following five issues;

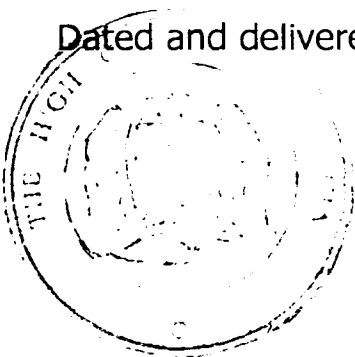
1. Whether the Applicant is the lawful owner of the suit premise.
2. Whether Respondent has trespassed to the suit premises.
3. Whether the Applicant is entitled to specific damages of Tshs 150,000,000/=
4. To what reliefs are the parties entitled to.
5. Whether the Application was time barred (additional issue).

From the DLHT's judgment, it is obvious that, the issues were partially determined. In particular and as correctly submitted by the appellant's counsel, the additional issue on time limitation was left undetermined.

Looking at the nature of this issue, I am of the same view with the appellant's counsel that the omission to consider and determine it was a fatal anomaly not only because the law requires that all issues be determined. The dire consequences for a matter filed out of time dictates that even if the tribunal had a liberty of selectively determining the issues which is not the case, the issue on time limitation could not be relegated or ignored. It must have been determined at the earliest opportunity. The law prevailing in our jurisdiction does not give a room for a court or tribunal to entertain a time barred matter. As per section 3 of the Law of Limitation Act, Cap 89, when a matter is found to have been filed out of time it should be dismissed. It was, therefore, incumbent for the DLHT to determine this issue first before proceeding to the rest of the issues. By ignoring it without assigning any reasons, the DLHT materially erred and rendered its judgment incompetent.

In view of the foregoing and based on this anomaly, I allow the appeal. The case file is consequently remitted to the DLHT for it to compose a fresh judgment. Costs to the appellant.

Dated and delivered at Moshi this 4th day of November, 2022.



X

Signed by: J.L.MASABO

J. L. MASABO

JUDGE

04/11/2022