IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 58 OF 2020

(C/F Appeal No. 36 of 2018 Land and Housing Tribunal for Arusha at Arusha, Originating from Ward Tribunal Application No. 10 of 2018Imbaseny Ward Tribunal)

ELIDAIMA YONA NASSARI.....APPELLANT

VERSUS

WILFRED HUME.....RESPONDENT

JUDGMENT

22/09/2021 & 28/01/2022

GWAE, J

This appeal emanates from the decision of the Ward Tribunal of Imbaseny in which the respondent sued the appellant for trespass on his land measuring 55x54 paces (Suit land). The Ward Tribunal gave its verdict in favour of the respondent on reasons that, the appellant had consented to exchange his land with the respondent where there is a school called Ester Memorial school that, had been built by the respondent. The appellant unsuccessfully appealed to the District Land and Housing Tribunal (appellate

tribunal), Undeterred, he has therefore opted to come to this court by way of an appeal equipped with five grounds of complaint; namely:

1. That, the appellate tribunal misdirected itself by holding the decision of trial tribunal without considering that the trial tribunal proceeded to hear the application without ascertaining the value of suit land for the purpose of satisfying itself on its pecuniary jurisdiction.
2. That, the appellate tribunal misdirected itself by holding the decision of trial tribunal which was not having jurisdiction to hear and determine the suit.
3. That, the appellate tribunal misdirected itself by holding the decision of trial tribunal whom failed (sic) to understand that the dispute between parties herein emanates from contractual obligation and it's not a purely land matter.
4. That, the appellate tribunal misdirected itself by upholding the decision of trial tribunal whose (sic) failed to properly evaluate the evidence adduced and tendered before it.
5. That, the appellate tribunal misdirected itself by holding the decision of trial tribunal while knowing that the trial tribunal

erred by failed (sic) to give report on visit to the locus in quo as one of the required mandatory procedures in visit locus in quo as laid in the case of **Nizar M.H Ladak vs Gulamali Fazal Jon Mohamed** (1980) TLR 29.

In order to appreciate the gist of the present appeal, it may perhaps be fitting, at this juncture, to set the factual background as follows; that sometimes in 2010 the appellant and the respondent entered into an agreement of changing the use of the appellant's land from being a farm land to allow construction of a school. The agreement was preceded with meeting of the appellant's family together with the respondent and minutes of the meeting showed that the appellant's family consent to the changes by putting their signatures.

As the parties agreed on the said change of use it was further contended that in return to such changes, the respondent herein built a house for the appellant and paid school fees of two children. The respondent on the other hand went on with the construction of the school and obtained a certificate of title. That, according to the appellant he does not dispute to have offered part of his land to the respondent however he contended that the appellant fraudulently, took all of his land and obtained a certificate of title thereon in

his name not even at the name of the school without his permission. According to him this is where the dispute between them arouse.

When the appeal was placed for hearing before me, both parties enjoyed legal representation from the learned counsel Mr. Said Amir and Aman Jackson respectively. With leave of the court the appeal was disposed of by way of written submission.

The appellant abandoned ground of appeal number 2 and 5 and went on submitting on ground number one as follows; that, the 1st appellate court misdirected itself in holding that, since the issue of pecuniary jurisdiction was not raised at the trial tribunal, therefore it could not be entertained by the appellate tribunal. It was thus his opinion that the issue of pecuniary jurisdiction can be raised at any stage even at an appellate stage. To butter his argument the counsel cited the cases of **Richard Julius Rukambura vs Isaack Ntwa Mwaikajila and another,** Civil Appeal No. 2 of 1998 and **Anwar Z. Mohamed vs. Said Selemani Masuka,** Civil Reference No. 18 of 1997.

The learned counsel went further to state that considering the expenses of building a school at the suit land and the land having a title

deed. Therefore, the trial tribunal had no jurisdiction to entertain the matter as per the provision of section 15 of the Land Disputes Courts Act Cap 216, R.E, 2019.

Responding to this ground of appeal, the respondent supported the decision of the appellate tribunal and added that this being the court of appeal is not in a better place to determine the issue of jurisdiction as it requires evidence to establish the value of the land. The counsel further added that cases cited by the learned counsel are distinguishable from the present case.

To begin with, this court wishes to point out that it is a long-established principle that, the issues of jurisdiction may be raised at any time thus, the parties as the court or tribunal have a duty to ascertain if the court or tribunal has the requisite jurisdiction to entertain the matter before it, therefore, the issue of jurisdiction may be raised at any time be it at stage of trial or appeal stage as opposed to the argument by the respondent. The appellate tribunal chairperson therefore misdirected herself by holding that the issue of jurisdiction cannot be raised at appeal stage. My holding is guided by the decisions of the Court of Appeal and this court for example in the case of **peter Ng'homango v. Attorney General,** Civil Appeal, No. 114 of 2011

(unreported), Court of Appeal, in its decision dated 1st March 2012 stressed a requirement to in cooperate parties to an issue of jurisdiction when observed by a trial court, by holding and I quote:

> "We are alive to the fact that the issue of jurisdiction can be raised at any time. However, with respect we think there was a need for the parties to be given the opportunity to address the court on that point of law".

(See also **Yazidi Kassim t/a Yazidi Auto Electric Repairs vs. The Attorney General,** Civil Application No. 354/04 of 2019 (unreported-CAT) and **John Sangawe v. Rau River Village Council** [1992] T.L.R 90. Basing on the above decisions, it was therefore improper to ignore such issue on the basis that the same is raised at an appeal stage. The holding of the appellate tribunal in this aspect is thus faulted.

In the matter at hand, it was the respondent who filed a suit against the appellant, the tribunal gave its judgment in favour of the respondent. Throughout the trial or appellate stage, neither of the parties questioned the pecuniary jurisdiction of the trial tribunal nor was there a valuation report to enable the trial or appellate tribunal to ascertain the value of the land in dispute. It is therefore the view of this court that the parties

herein submitted themselves to the pecuniary jurisdiction of the Ward Tribunal.

In determining whether the trial tribunal legally lacked pecuniary jurisdiction or not, this court is guided by the decision of the Court of appeal of Tanzania in the case of **Abdi M. Kipoto vs Chief Arthur Mtoi,** Civil Appeal No. 75 of 2017 (Unreported) where it was stated that;

> "It is the appellant who instituted the suit in the Ward Tribunal. The respondent participated in the suit and the Ward Tribunal determined the matter before it to its finality. No eyebrow was raised then and the matter was decided in favour of the appellant. It is our view that the parties to the suit in the Ward Tribunal submitted themselves to the pecuniary jurisdiction of the Ward Tribunal and to us that was quite sufficient."

Considering the circumstance and evidence on records, it is quite clear that the parties did not raise concern as to whether the trial tribunal was vested with pecuniary jurisdiction to entertain the matter as was the case in the case of **Abdi M. Kipoto vs Chief Arthur Mtoi** (supra) where the appellant's claim was over a piece of land measuring about 16 acres allegedly abandoned by him. Following the alleged abandonment, it was subsequently

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allocated to the respondent and that, it was the appellant who personally initiated the dispute in the ward tribunal.

However, in this particular dispute, it was the respondent who initiated these proceedings and the one who had been able to tender some necessary documents establishing that, there were improvements that had been done in the suit land, namely; an application letter for building permit dated 6th October 2006, a building permit issued on the 21st November 2008, a right of occupancy dated 5th September 2011 and a certificate of registration of the school (pre-primary, primary school) built in the suit plot which commenced its operation on the 20th March 2012 and a business license for operating Estha Memorial Academy. These documents lucidly reveal that, despite the value of the suit land yet there are developments that were undoubtedly made by the respondent subsequent to their agreement dated 5th July 2010. The preceding developments are obviously worth more than Tshs. 3,000,000/= as opposed to **Abdi M. Kipoto's** case (supra) where it was not certainly established if the land in dispute was developed save for use as there was no any shred of evidence establishing that, the suit land exceeded Tshs. 3,000,000/= unlike in the instant case. The facts of the case in the former case are distinguishable to the present case. Under normal

circumstances and evidence on records as earlier explained, the value of the building for nursery and primary school plus the land itself must have exceeded Tshs. 3,000,000/=. That being the case, I therefore find the 1st ground to be not non-meritorious, it is allowed, the trial court clearly lacked jurisdiction.

Having determined the 1st ground of appeal in affirmative, it is therefore not proper if I proceed determining other grounds of appeal as doing so will preempt the court or tribunal in adjudicating the parties' dispute if the same will be re-filed before the competent court or tribunal depending on the value of the suit land.

Having discussed as herein above, this appeal is accordingly allowed, the proceedings, judgment and decree of the trial tribunal are quashed and set aside. Equally, the DLHT's judgment and decree are quashed and set aside. The parties are advised to file the dispute in the court or tribunal of competent jurisdiction after making the necessary valuation of the suit land. Given the nature of this case, I shall no make an order as to costs.

It is so ordered.

M. R. GWAE
JUDGE
28/01/2022