

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

**(SONGEA DISTRICT REGISTRY)**

**MISCELLANEOUS LAND CASE APPEAL NO 03 OF 2021**

*(Originating from Land appeal No.52 of 2019 of Tunduru District land and Housing Tribunal and land case 24 of 2019 of Nanjoka ward)*

**SUWEDI AKIBA..... APPELLANT**

**VERSUS**

**MATORA BUSHILI..... RESPONDENT**

**JUDGMENT**

Date of Last order: 08/02/2022

Date of Judgment: 10/03/2022

**BEFORE: S. C. MOSHI, J**

This is a second appeal. The case originates from Nanjoka Ward where the appellant had unsuccessfully sued the respondent. The appellant was not satisfied with the Ward tribunal's decision, he appealed to the District Land Tribunal at Tunduru, he was also not successful; hence the present appeal basing on two grounds as reproduced hereunder:

1. That, the Appellate Tribunal erred in law and facts for determining the matter and upholding the decision of the Trial Ward Tribunal while the value of the land in dispute was not ascertained.
2. That, the appellate Tribunal erred in Law and facts for deciding the matter in favour of the respondent and upholding the decision of the trial ward Tribunal which did not consider the evidence adduced by the appellant.

The appeal was disposed of by way of written submissions. The appellant was represented by Mr. Hillary Ndumbaro, advocate whereas the respondent appeared in person.

Mr. Hillary Ndumbaro submitted on the first ground among other things that, the trial tribunal did not ascertain its jurisdiction in terms of section 15 of the land Dispute Court's Act which limits jurisdiction of the tribunal to the disputed land or property valued at three million shillings. He argued that, applying the law in the present case, there is procedural irregularity on the face of record as the value of the subject matter was not ascertained as the land complaint which was lodged before the ward tribunal nor the evidence thereto did indicate the value of the land in dispute for purposes of determining the pecuniary jurisdiction. In support

of his argument, he cited the case of **Mwenyekiti Serikali ya Kijiji Magenya Vs. Elias Magere**, Misc. Land Appeal NO. 111 of 2014 at Mwanza (Unreported), High court. He also cited the case of **Alexander Mashauri Vs. Peter Nyamhanga** Misc. Land Appeal No. 66/2020 HCT Musoma (Unreported), in this case the court held that, uncertainty as to jurisdiction including pecuniary jurisdiction renders proceedings a nullity.

He submitted further that, the respondent said that the land in dispute is "robo heka of mikorosho shamba" and not Tsh 250,000/= . He said that, the appellate tribunal wanted to use a sale agreement to justify the value of the land but the purchasing price was not stated in the sale agreement, in this regard he cited the case of **Sospeter Kahindi VS Mbeshi Mashini** Civil Appeal No. 56 of 2017. HCT, at Mwanza. He submitted that, the proceeding of the ward does not reveal the value of the land in dispute, in connection to this argument he cited the case of **Alexander Mashauri VS Dionizi Nyaoro**, Misc Land Appeal No. 65 of 2020 HCT at Musoma, at page 6 where the court held that, the issue of jurisdiction is fundamental, the ward tribunal was required to satisfy itself on whether it had power to determine the matter.

As far as the second ground of appeal is concerned, he said that, the first appellate tribunal failed to consider the evidence adduced by the appellant in trial Tribunal that the land in dispute which the respondent trespassed is not five acres which were alleged to be bought at Tshs 250,000/= as construed by the appellate tribunal. He referred to page 3 and 54 of the judgment which reads that,

*"Pia baada ya kupitia mwenendo wa shauri la ardhi husika nimeona kwamba thamani ya shamba lenye mgogoro imetajwa kuwa ni Tshs. 250,000/= ambayo ndiyo bei ya manunuzi ya shamba lenye mgogoro."*

He prayed that, the appeal be allowed by quashing the trial tribunal's proceeding and first appellate tribunal's proceedings.

Respondent's reply was brief, he inter alia submitted that, the value of the land in dispute was ascertained which was "robo heka ya mikoroshu" valued at shs. 250,000/. That, witnesses for both parties adduced their evidence, appellant's evidence was found to have no substance as compared to the evidence of the other side.

The issue is whether the appeal has merit.

To begin with, I will start to discuss the first ground of appeal. It is settled that, for a court or tribunal to entertain any matter before it, it must first

ascertain its jurisdiction, whether pecuniary or geographical. In the case at hand, the issue is whether the trial tribunal had pecuniary jurisdiction to entertain the matter placed before it. The value of the suit must always be seen in the statement of the claim before receiving evidence, therefore it precedes the testimony stage. I had keen scrutiny of the trial tribunal's proceeding but I have not seen a statement of claim, the record starts on 3/10/2019 with the testimony of the respondent, Matola Bushiri and appellant's (complaint) was received on 10/10/2019. It is not explained why the tribunal chose to hear respondent's evidence first instead of the claimant. The person who alleges has a duty to prove his claim.

Back to the trial tribunal's jurisdiction, it is however surprising that the appellant was the complainant who lodged the case in the tribunal, he did not state the value of the suit land, and he now blames the Ward Tribunal, indeed he has a share of blame. However, the trial tribunal was duty bound to ascertain its jurisdiction before entertaining the case, in this case it did not, see the case of **Alexander Mashauri VS Dionizi Nyaoro**, (Supra) where the court held that, the issue of jurisdiction is fundamental; the ward tribunal was required to satisfy itself on whether it had power to determine the matter.

Likewise in this case, as indicated in (Supra) **Alexander Mashauri Vs. Peter Nyamhanga** Misc. Land Appeal No. 66/2020 HCT Musoma (Unreported) the uncertainty as to pecuniary jurisdiction renders proceedings a nullity.

Therefore, all what was done was a nullity, both in the trial tribunal and before the appellate tribunal. This done, suffices to dispose of the appeal.

Consequently, the appeal is allowed. Any party who feels that he has any right on the suit land he may pursue it in a tribunal which has competent jurisdiction.

All said and done, I allow the appeal, and I make no order as to costs because the error was contributed by the trial tribunal.

Right of Appeal is explained.

 *S.C. Moshi*  
**S.C.MOSHI**  
**JUDGE**

**10/03/2022**