

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA

MISC. LAND APPEAL NO. 76 OF 2021

(Arising from Land Appeal No. 227 of 2020 in the District Land and Housing
Tribunal for Mara at Musoma)

BWIRE MTUNDI..... APPELLANT

VERSUS

MASATU EKONJO..... RESPONDENT

JUDGMENT

15th & 22nd March, 2022

A. A. MBAGWA, J.

This is a second appeal from the District Land and Housing Tribunal for Mara at Musoma. It originally started in the Ward Tribunal for Etaru. The respondent Masatu Ekonjo sued the appellant for encroaching his piece of land. After the respondent had given his evidence, the appellant declined to give his evidence. As such, the trial Tribunal proceeded *ex parte* to visit the locus in quo and finally decided the case in favour of the respondent.

The appellant was not satisfied with the decision of the trial Tribunal. He thus appealed to the District Land and Housing Tribunal for Mara in Land Appeal No. 227 of 2020. However, his appeal was dismissed with costs for want of merits.

Still aggrieved, the appellant filed in this Court a petition of appeal containing three grounds namely,

- 1. That, the first Appeal Tribunal erred in law for failure to determine that the trial tribunal does not have vested jurisdiction to determine this case in exparte according to the law**
- 2. That, the first Appeal Tribunal erred in law and facts for failure to determine the irregularity of the trial tribunal for summoning the Appellant to visit the locus in quo while the case proceeded in exparte on his side**
- 3. That, the Trial Tribunal and first Appeal Tribunal erred in law and facts to determine that the Respondent who was complainant did not disclose the value of the land in dispute which has the size of 305 X 273 steps and have 12 mikuya, 2 sungu, 2 mango trees which generally approximated the value of more than three million**

When the matter came for hearing, the appellant was represented by Noah Mwakisisile, learned advocate whilst the respondent had the services of Sifael Muguli, learned advocate.

It is worth noting at this juncture that all the three grounds of appeal were, for the first, raised before this Court. Consequently, upon going through them, the second ground was found to be on pure point of facts and therefore untenable to be raised at the second appeal. The appellant was thus allowed to argue the first and third grounds only in that they were on pure point of law.

The appellant's counsel preferred to start with the third ground on pecuniary jurisdiction. Submitting in respect of this ground, Mr. Mwakisisile said that the respondent did not disclose the value of land in dispute hence the trial Tribunal lacked pecuniary jurisdiction to entertain the matter. The learned advocate submitted that section 15 of the Land Disputes Courts Act is to the effect that the pecuniary jurisdiction of the Ward Tribunal is three million. He was thus opined that any dispute referred to the Ward Tribunal must categorically state the value for the Ward to ascertain the pecuniary jurisdiction. The appellant's counsel concluded that since the value of the land in dispute was not disclosed, the Ward Tribunal had no jurisdiction to try the matter. The counsel cited to this Court the case of **Alexander Mashauri vs Sala Samwel**, Misc. Land Appeal No.68 of 2020, HC at Musoma and submitted that the court

held that it is the pleading or evidence which establishes the pecuniary jurisdiction.

On the strength of the foregoing, Mwakisisile argued that since neither the pleading nor evidence disclosed the pecuniary jurisdiction of the Tribunal, the proceedings and consequent decision of the Ward Tribunal were nothing but a nullity.

With regard to the first ground of appeal, the appellant's counsel contended that the Ward Tribunal did not have jurisdiction to determine the case *ex parte*. The counsel lamented that neither the Ward Tribunal's Act nor Land Disputes Court Act do provide for *ex parte* hearing in the Ward Tribunal. He said that the High Court, on this, has held that in such circumstances, the Ward Tribunal should seek directions from the District Land and Housing Tribunal. The counsel referred this Court to the case of **Petro Bira Chato vs Hima Hudu Ubaya**, Misc. Land Appeal No. 47 of 2020, HC at Dodoma in support of his contention. He concluded that since the Ward Tribunal heard the matter *ex parte* and without directions from the District Land and Housing Tribunal, the proceedings were a nullity. He thus prayed the Court to nullify the proceedings of both Ward Tribunal and first appellate Tribunal and consequently order trial de novo. He also prayed each party to bear its own costs.

In reply, Mr. Muguli, learned counsel for the respondent resisted the appeal. He strongly submitted that the Ward Tribunal was vested with requisite jurisdiction. However, on being probed by the Court, the counsel admitted that there is nowhere in the proceedings the value of land in dispute was mentioned.

With respect to the first ground of appeal, the respondent's counsel submitted that the law is silent on the *ex parte* hearing. He said that where there is a lacuna, resort should be made to the Civil Procedure Code. To bolster his argument, the respondent's counsel referred this court to the provisions of section 49 of the Land Disputes Courts Act. Mr. Muguli concluded that much as the law is silent on the *ex parte* hearing, such an error does not amount to jurisdictional issue and therefore should not be raised at the second appeal. Finally, the respondent's counsel prayed for dismissal of the appeal.

I have keenly canvassed the rival submissions and the record of appeal. To start with the third ground of appeal which relates to non-disclosure of the value of the land in dispute, it is a common ground that there is nowhere in the proceedings the value of the disputed land was mentioned. On the one side, the appellant's counsel strongly submitted that since the value was not stated, the Ward Tribunal could not ascertain

whether the land in dispute was falling within its jurisdiction. Despite the appellant's counsel's critique on the pecuniary jurisdiction, he still could not tell the court the value of the land. On the other side, whereas the respondent's counsel admits that the value was not disclosed, he maintains that the Ward Tribunal had jurisdiction to entertain the matter. The appellant's counsel relied on the decision of this court in **Alexander Mashauri vs Sala Samwel**, Misc. Land Appeal No. 68 of 2020, HC at Musoma where it was held that pecuniary jurisdiction should be established either in the pleadings or evidence. Whereas I agree with the appellant's counsel that pecuniary jurisdiction should be established either through pleadings or evidence, I part company with him when it comes to procedures in the Ward Tribunal. Its procedures are a bit peculiar in the sense that they are based on orality, simplicity and informality. In fact, there are no pleadings in the Ward Tribunal nor do they have pre-trial conferences. Thus, in absence of clear evidence on the value of the land in dispute, it would be improper to speculate that the subject matter has the value exceeding three million shillings. As hinted, the appellant's counsel could not tell this court the value of the land in dispute. Thus, mere contentions from the bar does not oust the Tribunal's jurisdiction unless the appellant had put in evidence to the effect that value

of land in dispute was well beyond three million shillings. See **Sospeter Kahindi vs Mbeshi Mashini**, Civil Appeal No. 56 of 2017 CAT at Mwanza and **Maigu E. M. Magenda vs Arbogast Maugo Magenda**, Civil Appeal No. 218 of 2017 CAT at Mwanza. In view thereof, non-disclosure of the land value in the Ward Tribunal is not fatal unless there is clear evidence from either party that the value is above the pecuniary jurisdiction of the Ward Tribunal. In the event, I find the third ground of appeal in respect of pecuniary jurisdiction without merits.

Coming to the first ground of appeal, the appellant's counsel challenged the proceedings in the Ward Tribunal on the ground that it did not have legal mandate to conduct *ex parte* proceedings. He relied on the decision of this Court in **Petro Bira Chato vs Hima Hudu Ubaya**, Misc. Land Appeal No. 47 of 2020, HC at Dodoma. However, the appellant's counsel was unable to tell the court any provision of law preventing the Ward Tribunal from conducting *ex parte* hearing where the other party maliciously declines to appear and give evidence. Conversely, the respondent's counsel opposed the ground stating that the law is silent hence the Ward Tribunal was entitled to resort to Civil Procedure Code in terms of section 49 of the Land Disputes Courts Act. I have had an occasion to navigate through the Ward Tribunals Act and the Land

Disputes Courts Act. Admittedly, neither the Ward Tribunals Act nor the Land Disputes Courts Act expressly provides for *ex parte* hearing. Equally, there is no provision barring the Ward Tribunal from conducting *ex parte* hearing. Of interest is section 49 of the Land Disputes Court Act which empowers the Tribunal to apply the laws set out under section 180 of the Land Act to wit, customary laws of Tanzania, common law and doctrine of equity. Further, section 15(2) of the Ward Tribunals Act gives the Ward Tribunal powers to regulate its own proceedings in case of lacuna. In the instant appeal, the appellant was summoned but arrogantly refused to appear and enter defence. I am therefore satisfied that, in the circumstances, the Ward Tribunal acted within the parameters of section 15(2) when it decided the matter *ex parte*.

In view thereof, I am of unfeigned opinion that the Ward Tribunal was right to decide the matter *ex parte* given that the appellant was duly notified and was present all the time but after closure of the plaintiff's case he deliberately refused to defend his case. I have read the case of **Petro Bira Chato** (supra) cited by the appellant's counsel but I found it distinguishable because in that section 15(2) of the Ward Tribunals Act and section 49 of the Land Disputes Courts Act were not taken into account. I therefore find the first ground of appeal devoid of merits as well.

That said and done, this appeal is found without merits and consequently dismissed with costs.

It is so ordered.

Right of appeal is fully explained.



A. A. Mbagwa
A. A. Mbagwa

JUDGE

18/03/2022

Court: The judgment has been delivered in the presence of the respondent and his advocate Sifael Muguli, on the one side and in absence of the appellant, on the other side, this 22nd day of March, 2022.

A. A. Mbagwa
A. A. Mbagwa

JUDGE

22/03/2022