

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 19 OF 2020

(Appeal arising from the District Land and Housing Tribunal of Arusha in Land Appeal No. 21 of 2018, originating from Application No. 45 of 2018 at Engutoto Ward Tribunal)

LEKALAI ALADALA APPELLANT

VERSUS

NGALAI ALADALA 1ST RESPONDENT

JOSEPH ALADALA 2ND RESPONDENT

JUDGMENT

22/2/2022 & 20/5/2022

ROBERT, J:-

The Respondents herein filed an action against the Appellant at the Ward Tribunal of Engutoto alleging trespass of land measuring two acres. The trial Court entered judgment in favour of the Respondents and ordered the Appellant to vacate the disputed land. Aggrieved, the Appellant unsuccessfully lodged an appeal at the District Land and Housing Tribunal for Arusha challenging the decision of the trial Tribunal. Still aggrieved, he preferred this appeal against the decision of the District Land and Housing Tribunal on three grounds, to wit:

1. *That the appellate tribunal erred in law and fact by failure to consider that the Appellant was not afforded the right to be heard.*
2. *That, the appellate Tribunal erred in law and fact by failure to consider that the trial Tribunal refused to accept the evidence adduced by the Appellant.*
3. *That, the appellate Tribunal erred in law and fact by failure to consider that the trial tribunal decision based on contradictory evidence.*
4. *That, the appellate Tribunal erred in law by dismissing the appeal without considering the issue of territorial jurisdiction in the ward tribunal which rendered the whole proceedings to be null and void (for lack of jurisdiction).*
5. *That, the appellate Tribunal erred in law and in fact by not observing the fatal irregularities (contradictory evidence in statements of the respondents and in the documents adduced during trial which show absence of locus standi by the respondent; there was also forgery of the Appellant's testimony which took place in the Trial Tribunal).*

At the request of parties, the appeal was argued by filing written submissions. The Appellant's written submissions were drawn and filed by Mr. Richard Patrice Masha, learned counsel for the Appellant whereas the 1st and 2nd Respondents, who appeared in person without representation, each filed their respective reply submissions.

Highlighting on the grounds of appeal, the learned counsel for the appellant opted to drop the second ground of appeal and argued the remaining grounds.

Submitting on the first ground, he argued that, the Appellant was not given the right to be heard in the trial Tribunal. He referred the Court to a letter dated 17/1/2018 addressed to the District Land and Housing Tribunal of Arusha by the Chairperson of Engutoto Ward Tribunal indicating that the Appellant was not heard and therefore the matter was heard *ex-parte*. He maintained that, there was no proof that the Appellant was served but refused to appear before the Tribunal.

He faulted the judgment and proceedings of the trial Tribunal for indicating that the case was heard *inter-partes* alleging that, by doing so the Ward Tribunal indicated that its members did not disclose this dispute to the Appellant maliciously and for personal gains. As a consequence, he maintained that, the judgment of the trial Tribunal is prejudiced with malice.

He submitted that the Appellant saw the Ward Tribunal Members when they visited the suit property without notice to him and when he lamented that they were aiming at taking his land the Chairperson of Tribunal misdirected herself that the Appellant did not want to cooperate with the Tribunal and insulted members. He referred this Court to page 3 of the impugned judgment of the first appellate Court.

He submitted further that the trial Tribunal violated section 16 (1)&(2) of the Ward Tribunals Act, No. 7 of 1985 and Article 13(6)(a) of the Constitution of the United Republic of Tanzania. He cited the case of **Attorney General vs Lohay Akonaay & Another, Civil Appeal 31/1994 (1995)2LRC 399** in support of his argument.

Responding to the first ground of appeal, both the first and second Respondents submitted that the Appellant's right to be heard was not violated but he partially denied himself that right. They maintained that, the Appellant was summoned before Engutoto Ward Tribunal and he appeared during the testimony of the first and second Respondents but he didn't appear when he was required to testify. The efforts to call him to defend his case having failed the trial Tribunal decided to visit the disputed land. However, he appeared when members of the Ward Tribunal gathered at the disputed land and started to complain and prohibit them from putting any mark on that land.

Coming to the third ground, the learned counsel for the Appellant submitted that this matter was marred with contradictions. He argued that, there was a contradiction between the letter from the Chairperson of Engutoto Ward Tribunal to the District Land and Housing Tribunal dated

17/1/2018 which indicated that the case was heard ex-parte and the judgment and of the Trial Tribunal dated 2/2/2018 indicated that the case proceeded *inter partes*.

He submitted further that, in the proceedings of the trial Tribunal there is no witness who testified to the effect that, the Appellant invaded the suit land at night, tilled it and planted maize. However, members of the Ward Tribunal opined so. He maintained that, this is another contradiction since the opinion of members of the Ward Tribunal was not based on the testimony of witnesses.

Further to that, he argued that, there is a contradiction on the fact that the decision of the trial Tribunal was given in favour of the Respondents who were not allocated any part of the suit land according to the Minutes of the meeting (KIKAO CHA BOMA) which was relied on by the Respondents and based upon by the trial Tribunal while the Respondents were incapable of suing as they lacked *locus standi*.

Responding to the third ground, both Respondents submitted that the matter filed before the Ward Tribunal was only one which is Application No. 45 of 2018. The Appellant was afforded the right to be heard but he

appeared during the hearing of the first and second Respondents' case only then he never came back to defend his case. He appeared again when the Ward Tribunal visited the disputed land where he responded to some questions. The Respondents argued that, the Appellant is seen in the proceedings of the Ward Tribunal because of the questions he answered when the Tribunal visited the locus in quo after he had denied himself the opportunity to defend his case. They argued further that, the only remedy available to the Appellant was to file an application to set aside ex-parte judgment and not to appeal as he did.

Amplifying on the fourth ground, Counsel for the Appellant faulted the appellate Tribunal for dismissing the appeal without considering the issue of territorial jurisdiction of the Ward Tribunal which rendered the whole proceedings null and void. He submitted that, the trial Tribunal lacks territorial jurisdiction because the suit land is located at ELUWAI village in Monduli Juu Ward while the matter at hand was adjudicated at Engutoto Ward which is outside Monduli juu ward and it has its own Ward Tribunal. To support his argument, he made reference to section 3 and section 8(3) of the Ward Tribunal Act, Cap. 206 (R.E.2002).

In reply, the two Respondents argued that, at the time of filing their suit, Monduli Juu Ward Tribunal was not yet established and both Wards were sharing one Ward Tribunal which is Engutoto Ward Tribunal. They faulted the Appellant for not raising this issue at the Ward Tribunal.

With regards to the fifth ground, counsel for the Appellant faulted the appellate Tribunal for not observing irregularities in the decision of the trial Tribunal. He maintained that the documents tendered by respondents during trial contradicts the testimonies of the respondents. He made reference to the document titled "MUHTASARI WA KIKAO CHA BOMA" which he said did not mention the names of the Respondents in the list of individuals who were allocated a piece of land but in their testimonies, the Respondents claimed that they were allocated one acre of land each. He argued that the Respondents did not have any right or interest in the disputed land and therefore they had no locus standi.

In response, the Respondents seemed not to have grasped the argument made by the Appellant. They maintained that, the Ward Tribunal had discretionary power to admit, refuse or give any direction in relation to a document brought to Court for the sake of justice. They maintained that

the Minutes of the meeting (MUHTASARI WA KIKAO) was not forged as both sides including the Appellant had signed it.

In his rejoinder submissions, the Appellant reiterated the arguments that he was not afforded his right to be heard, the Ward Tribunal lacked jurisdiction to entertain this dispute, the Respondents lacked locus standi as they had never been given the disputed land and pointed out the irregularities in the proceedings of the trial Tribunal. Thus, he prayed for this appeal to be allowed.

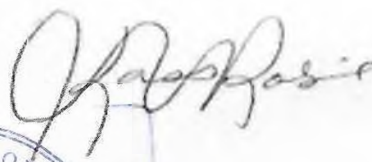
Having read the submissions of both parties and examined the records of this matter, this Court finds the issue raised in the fourth ground of appeal in respect of the territorial jurisdiction of the Ward Tribunal to be in the heart of this appeal and considers it capable of disposing of this appeal. I will therefore start by deliberating on the fourth ground of appeal.

The Appellant argued that the Ward Tribunal of Engutoto lacked territorial jurisdiction to entertain this dispute as the disputed land is located in Monduli Juu Ward and therefore outside the territorial powers of Engutoto Ward Tribunal. It is not disputed that section 8(3) of the Ward Tribunals Act, Cap. 206 (R.E.2002) gives the Ward Tribunal powers to exercise its

jurisdiction within the area of the Tribunal's jurisdiction. In order to determine if a land in dispute falls within the territorial jurisdiction of the Ward Tribunal, a description of the disputed land in terms of its geographical location and boundaries is needed. However, in this matter, apart from the submissions made by parties in this appeal, the description of the disputed land was not given both at the trial Tribunal and the first appellate Tribunal. The only description given in the two impugned judgments of the lower Tribunals is the fact that the disputed land measured two acres. This description is too vague to describe the disputed property to the required comprehension. The Court finds that, in the absence of a proper description of the disputed land in terms of its geographical location, size and boundaries, it is not only difficult to determine whether the dispute land falls in the territorial jurisdiction of a particular Ward Tribunal but also difficult to identify the proper specification of the land adjudicated upon and to preclude any future litigation in respect of the said property.

As a consequence, this Court finds that, this suit was incompetent for failure to give a proper description of the disputed land. Hence, I find no pressing need to deliberate on the remaining grounds of appeal. I therefore proceed to set aside the proceedings of the lower Tribunals and quash the

decision thereof. The Respondents are at liberty to file a fresh suit at the competent Tribunal with proper description of the disputed land, if they are still interested to pursue the matter. In the circumstances of this case, I give no order for costs.


 THE HIGH COURT OF TANZANIA
K.N.ROBERT
JUDGE
20/5/2022