

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND APPEAL CASE NO. 03 OF 2021

SAID OMARY DANGI.....APPELLANT

VERSUS

RAMADHANI MUHIDINI IDALA..... RESPONDENT

(Arising from the decision of Kondoa District Land and Housing Tribunal)

(R.S Mandari-Chairman)

Dated 04th March,2020

In

Land Appeal Case No.35/2021

JUDGMENT

25thApril & 20thMay,2022

MDEMU, J:.

This is a second appeal from the District Land and Housing Tribunal for Kondoa. Brief facts of the case are that, in Mondo Ward Tribunal, in Land Case No.10/2020, the Respondent claimed that the Appellant and one Issa Ndee who was the first Defendant at trial tribunal trespassed into his land and proceeded to cultivate various crops. After full trial, the trial tribunal decided in favour of the Respondent by declaring him the lawful owner of the suit land. Aggrieved with the findings, decision and orders of the trial tribunal, the Appellant appealed to the District Land and Housing Tribunal at Kondoa, in Land Appeal No. 33 of 2021 which upheld the decision of the trial Tribunal. Aggrieved again, the Appellant appealed

before this Court on the following grounds translated into English language: -

1. *That, the Appellate tribunal erred in law by misleading itself during the determination of the appeal for failing to figure out that the land dispute at the trial tribunal was already determined in 2007 through Land Case No.25/2006 before Mondo Ward Tribunal.*
2. *That, the Appellate tribunal erred in law during the determination of the appeal from the ward tribunal by failing to take into consideration that the Ward tribunal didn't state the pecuniary value of the disputed land which in fact the same is beyond the tribunal's jurisdiction.*
3. *That, the Appellate tribunal erred in law during the determination of the appeal from the Ward tribunal by omitting to figure out that the trial tribunal denied the Appellant right to be heard since it chased away the Appellant's witnesses hence, they didn't testify.*

4. *That, the Appellate tribunal erred in law as it failed to note that the trial tribunal was not properly constituted.*
5. *That, the Appellate tribunal erred in law in not evaluating reasons which made it to decide in favour of the Respondent and not the Appellant.*
6. *That, the Appellate tribunal erred in law in deciding in favour of the Respondent basing on weak evidence.*

On 25th April, 2022 when the appeal was scheduled for hearing, both parties appeared in person. The Appellant prayed this court to adopt his grounds of appeal to be part of his submissions. He then added that, the Respondent did not appear before the first Appellate tribunal although the notice was effected to him, hence the appeal at the first Appellate tribunal was disposed in his absence. He finally prayed that; the appeal be allowed.

In reply, the Respondent conceded that he didn't appear at the first Appellate tribunal as he was not notified. He finally prayed his reply to the petition of appeal be adopted to form part of his submissions.

I have gone through parties' submissions, grounds of appeal, reply thereto together with the entire record available. I will determine the appeal by responding to the grounds of appeal as follows:

On the first ground of appeal, the Appellant's complaint is that, the matter was determined by the Ward Tribunal in 2007 through Civil Case No. 25/2006. In it therefore, the Appellant meant that, the matter was res judicata. The doctrine of res judicata entails the identity of parties or their proxies; subject matter, and the cause of action between two cases, one of which has been conclusively and finally determined prior to the suit in question before a court of competent jurisdiction. Both sections 9 and 10 of the Civil Procedure Code, Cap. 33 R.E 2019 amplify on the doctrine. There is no dearth of authorities on the doctrine see for example the case of **Stephen Wasira v. Joseph Warioba (1999) TLR 334; Shengena Ltd v. National Insurance Corporation and Consolidated Holding Corporation, Civil Appeal No. 08 of 2008** and the case of **Onesmo Olengurumwa v. Attorney General, Misc. Civil Cause No. 36 of 2019** (both unreported) where the Indian case of **Atyadhyan Ghosal v. Deorjin Debi, AIR, 1960 SC 941** was referred by the Court of Appeal and it held that: -

"When a matter, whether on a question of fact or law, has been decided between two parties in one suit and decision is final, either because no appeal was taken to the higher court, or no appeal has in such case, neither party will be allowed in the future suit between the same parties to canvass the matter again".

The Appellant complaint is that, the present dispute was already determined through Land Case No.25/2006 before Mondo Ward Tribunal, but looking at trial proceedings, there is neither a copy of judgment nor proceedings of the alleged prior determined case tendered and admitted before it. Furthermore, the ground was not raised during trial therefore raising it now, I find it to be an afterthought. Thus this ground has no merits.

Regarding the second ground that the pecuniary value of the disputed property was not stated; this Court has seen it that, the trial tribunal proceeded with the determination of the matter without ascertaining the pecuniary value of the suit land. Section 15 of the Land Disputes Courts Act, Cap. 216 provides for the pecuniary jurisdiction of the Ward tribunal. The section provides: -

15. Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall, in all proceedings of a civil nature relating to land, be limited to the disputed land or property valued at three million shillings.

Ward tribunals, like any other tribunals, are creatures of the statute and they derive their powers from the law which they are established. Ward tribunals are established under the Ward Tribunals Act, Cap. 206 under Section 4 read together with Section 11 of Land Disputes Courts Act Cap. 216. In the case of **Tanzania Revenue Authority vs. Tango Transport Company Ltd, Civil Appeal No. 84 of 2009** (unreported), it was held that, jurisdiction is the bedrock on which Courts' authority and competence to entertain and decide matters rest. The Court, on the same case said that, an issue questioning or addressing the jurisdiction of Court is paramount and can be raised at any time even at the stage of appeal. I therefore find this ground of appeal meritorious.

On the third ground of appeal, the Appellant complained that, his right to be heard was infringed. In our jurisdiction, the right to be heard (*audi alteram partem*) is a fundamental principle to be observed by both judicial, quasi-judicial and administrative bodies. This has been stressed

in a range of cases, including **Mbeya - Rukwa Autoparts and Transport Ltd v Jestina George Mwakyoma [2003] T.L.R.251**, and the case of **Ausdrill Tanzania Limited vs Musa Joseph Kumili & Another, Civil Appeal No. 78 of 2014** (unreported). Specifically in the case of **Mbeya - Rukwa Auto Parts** (supra) where the Court of Appeal of Tanzania cited with approval the case of **Ridge vs. Baldwin [1964] AC 40**, it was stated that: -

"In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13(6) (a) includes the right to be heard among the attributes of equality before the law... "

Furthermore, section 13(3) (b) of Cap. 216 expressly provides that Ward tribunal when discharging its functions must adhere to the principles of natural justice including the right to be heard. The provision categorically provides: -

(3) The Tribunal shall, in performing its function of mediation, have regard to-

(b) natural justice in so far as any customary principles of mediation do not apply.

Looking at the trial tribunal proceedings, I find that, the Appellant right to call witnesses was not infringed. He called one witness to support his case, that is one Abdalla Ally Kimolo. The record is also silent as to whether he prayed to have other witnesses to testify and such prayer got not granted. That said, I find this ground baseless too.

On the fourth ground of appeal concerning constitution of the Ward tribunal when determining the case; Section 11 and 14(1) of Cap. 216 provides for the constitution of the Ward tribunal. The Sections provides:

11. Each Tribunal shall consist of not less than four not more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act

14.-(1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.

Back to the instant appeal, the trial records show that, the trial tribunal when hearing and delivering judgement had six members namely: -

- 1. Mr. Halifa R. Mwenda- Chairperson*
- 2. Ms. Hadija J. Irunga- Member*

3. Mr. Rashidi J. Cheto-Member

4. Ms. Mwanaisha Idd Kidunda-Member

5. Mr. Thomas J. Chorray -Member

6. Mr. Mohamed R. Maingu

Now looking at what is provided under section 11 of Cap. 216, I find that the trial tribunal was properly constituted. It had six members four being men and two being women. The law just quoted above is to the effect that the quorum is to have less than four but not exceeding eight members. Since in the case at hand there were six members then the tribunal was properly constituted. Therefore, this ground too have no merits.

That notwithstanding, it is apparent that the proceedings of the trial tribunal were vitiated. In consequence, the decision made thereon is a nullity on one reason, that is, it proceeded to determine the matter without ascertaining if it has pecuniary jurisdiction. Likewise, the proceedings and judgement of first Appellate tribunal which stemmed from the vitiated proceedings are a nullity.

For the reason I have endeavoured to state, I exercise the revision powers vested in this Court by nullifying the proceedings and judgements of Mondo Ward tribunal in Land Case No.10/2020 and Kondo District

Land and Housing Tribunal in Land Appeal No.35 of 2021. An order for retrial is not tenable. It is ordered further that, either party is at liberty to pursue the matter in accordance with the current position of law. I make no orders as to costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
20/05/2022

DATED at DODOMA this 20th day of May, 2022.



Gerson J. Mdemu
JUDGE
20/05/2020