

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA DISTRICT REGISTRY)**

AT SONGEA

PC CRIMINAL APPEAL NO. 02 OF 2021

*(Arising from Misc. Criminal Application No. 01 of 2021 of Mbinga District Court at Mbinga,
Originating from Criminal Case No. 41 of 2021 at Ruanda Primary Court)*

JAPHET EVOD MAPUNDA JENIFA EVOD MAPUNDA GREYSON EVOD MAPUNDA	} APPELLANTS
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VERSUS

LUKRESIA CIPRIAN MAPUNDA RESPONDENT

JUDGEMENT

Date of last order: 23/05/2022

Date of Judgement: 01/06/2022

MLYAMBINA, J.

In this appeal, the Court will deal with the issue of Primary Court jurisdiction in relation to the dispute which is of civil and criminal in nature but arising out of the land dispute.

Before going to the merit of the appeal here is the genesis of the case. The Appellants herein were arraigned before Ruanda Primary Court for the offence of malicious destruction of property contrary to *section 326 (1) of the Penal Code [Cap 16 R. E. 2019] [henceforth the Penal Code]*. Before the trial Court, it was alleged that, the Appellants herein jointly trespassed into Respondent's land and intentionally demolished her house which was made with bricks and loofing with

grass. The said house had three rooms with veranda, worth TZs 1,500,000/=. After demolition, the Appellants started to build their house thereon.

The case was heard partly. Thereafter, the Appellant herein through their advocate Mr. Kitara Mugwe applied for the transfer of the case from trial Court to District Court. The ground for transfer was that the case was filed in a wrong registry which is Primary Court. He requested the said case to be transferred to the Land Tribunals. The prayer was granted. However, after the Court went through the case file, it discovered that there was nothing wrong. The District Court returned the case to the trial Court to proceed with the hearing. The Appellant was aggrieved by the decision of the District Court, hence this appeal with two grounds of appeal, namely:

1. *That, the District Court erred in law and facts when failed to ascertain and state as to whether the nature of the dispute is that of land in nature or a criminal offence.*
2. *That, the District Court also erred in law and facts when ordered that the trial Court proceedings to continue where it ends without taking into account*

as to whether the trial Court had jurisdiction over the matter.

At the date scheduled for the hearing, the Appellants were represented by Mr. Kitara Mugwe, learned advocate while the Respondent appeared in person defending for herself.

The case was heard orally. In his submission in relation to the first ground of appeal, the Counsel for the Appellants averred that the parties to this case themselves while testifying before the trial Court conceded that the source of the dispute was a land ownership. The Respondent alleged that the Appellants demolished her house, that's why she brought them before the Primary Court. The Appellant's Counsel thought that the act of the District Court to return the matter to the Primary Court was improper as the said Court has no jurisdiction to deal with the land matter while he already knows that the matter is a land matter.

He further submitted that, the District Court was supposed to nullify the proceedings of the trial Court and order the matter be heard by the Land Tribunal. The dispute before the Primary Court was on demolishing the Respondent's house and building their own house in her land. He prayed the appeal to be allowed by nullifying the decision of the District Court, alternatively this Court order the matter be determined by the Land Tribunal.

In reply, the Respondent said that, she did not support this appeal and the source of the dispute was not a land but a demolition of their house. She prayed justice be done.

The Counsel for the Appellants had nothing to re-join but reiterated his submission in chief.

After careful consideration of the party's submission and going through the record, the issue to be determined in this appeal is; *whether the trial Primary Court had jurisdiction to entertain the matter*. The term jurisdiction is not defined in any statutes of our land. According to ***The Osborn's Concise Law Dictionary, Eight Edition*** which was edited by Leslie Rutherford and Sheila Bone, the word jurisdiction was defined as:

The power of the Court or judge to entertain an action, petition or other proceedings.

In the case of **Clement George Mwakibinga v. CRDB Branch Manager-Kahama and Another**, Civil Appeal No. 6 of 2021, High Court of Tanzania at Shinyanga, her Ladyship Honourable Mkwizu, J quoted with approval the phrase from **Stroud's Judicial Dictionary of Words and Phrases** which narrate the meaning of the word jurisdiction as:

In the narrow and strict sense, the jurisdiction of validity constituted Court connotes the limit which are imposed upon its power to hear and determine issues between person seeking to avail themselves of its process by reference.

- 1. To the subject matter of the issue,*
- 2. To the persons between whom the issue is joined,*
- 3. To the kind of relief sought or to any combination of these factors.*

From the above quoted definition, it is clear that the jurisdiction is a fundamental issue in which the Court is vested with the power to entertain the matters at hand. In our laws, it is a cardinal rule that the jurisdiction is creature of the statutes, and it can not be ousted except by the express provision of the law. There is plethora of decision in which the Court of Appeal of Tanzania has so stated. To mention one, the case of **The Republic v. Ahmad Ally Ruambo**, Criminal Revision No. 03 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported).

In the case of **Commissioner General Tanzania Revenue Authority v. African Barrick Gold PLC**, Civil Appeal No. 11 of 2020 Court of

Appeal of Tanzania at Dar es Salaam (unreported) where the Court has this to say:

The jurisdiction of Courts or Tribunals is a creature of a statutes; therefore, the question of jurisdiction is so fundamental and as a matter of practice at the commencement of the trial the Court or Tribunal must be certain of their jurisdiction position determine whether vested with requisite jurisdiction because it goes to the very root of the authority.

The jurisdiction of the Primary Court can be gathered from the provision of *section 18 of the Magistrate Court Act [Cap 11 R. E. 2019]*. For easy reference, *I section 18 (supra)* provides:

*18.-(1) a primary Court shall have and exercise
jurisdiction*

(a) in all proceedings of a civil nature-

*(i) where the law applicable is customary law
or Islamic law:*

*Provided that **no primary Court shall have
jurisdiction in any proceedings of a civil
nature relating to land;***

(ii) for the recovery of civil debts, rent or interest due to the republic, any district, city, municipal or town council or township authority under any judgment, written law (unless jurisdiction therein is expressly conferred on a Court or Courts other than a primary Court), right of occupancy, lease, sublease or contract, if the value of the subject matter of the suit does not exceed fifty million shillings and in any proceedings by way of counter claim and set off therein of the same nature and not exceeding such value;

(iii) for recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings, and in any proceedings by way of counterclaim and setoff therein of the same nature not exceeding such value; and

(b) in all matrimonial proceedings in the manner prescribed under the law of Marriage Act.

(c) in all proceedings in respect of which jurisdiction is conferred on a primary Court by the first schedule to this Act;

(d) in all proceedings in respect of which jurisdiction is conferred on a primary Court by any other law; and

(e) in all proceedings in which the attorney General's right of audience is excluded.

[Emphasis added]

The law is clear on what matters do the Primary Courts have jurisdiction to deal with and which are not vested to them. From the record, the Respondent herein alleged that the Appellant entered into her land and demolished her house. Thereafter, the Appellants built their house. From that point of view, if true, in a literary meaning the Appellant trespassed to the Respondent's land and destroyed her house maliciously. Therefore, the source of this dispute was land ownership.

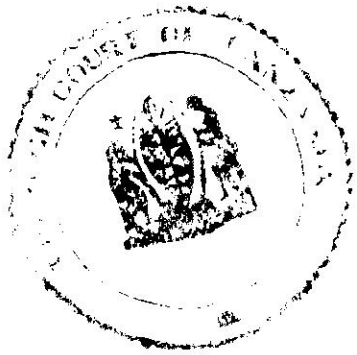
The primary Court has no jurisdiction to entertain a matter which originates from the land dispute as per *Section 18 (1) (a) (i) of the Magistrates Courts Act (supra)*. In the cases where the dispute is of both Civil and Criminal in nature, it is Civil case which should be determined prior to a Criminal case. This was held in the case of **The Director of**

Public Prosecutions v. Malimi Sendama and 3 Others, Criminal Appeal No. 92 of 2018 Court of Appeal of Tanzania sitting at Tabora, where the Court cited with approval its earlier decision in the case of **Simon Mapurisa v. Gasper Mahuya**, Criminal Appeal No. 221 of 2006 (unreported) where the Court had this to say:

Disputed ownership of land is not resolved in criminal proceedings. The law in that issue is that, where there is a dispute regarding boundaries of adjacent private land or ownership of a party or whole of adjacent land, such dispute is resolved in civil Court.

There were two issues before the trial Court which are civil issues based on land ownership and criminal issue based on trespass and destruction of the Respondent's house. Being guided by the two Court of Appeal decisions herein above, I find it right for the civil matter on land ownership to be entertained first before a competent Land Tribunal. The criminal issue will be dealt thereafter.

Therefore, from the reasons adduced above I hereby allow this appeal. The proceedings, judgement and orders of both lower Courts are hereby nullified for being entertained with the Court which has no jurisdiction. The parties may file their dispute before the Tribunal of competent jurisdiction, if they wish to do so.

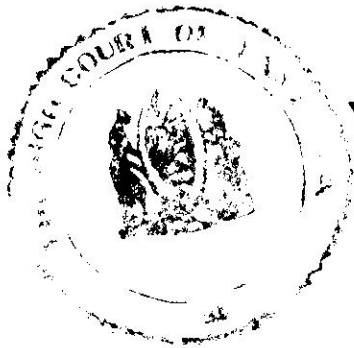


Y. J. MLYAMBINA

JUDGE

01/06/2022

Judgement pronounced and dated 1st day of June, 2022 in the presence of both parties in person.



Y. J. MLYAMBINA

JUDGE

01/06/2022