

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA DISTRICT REGISTRY**

**AT ARUSHA**

**MISC. LAND APPEAL No. 27 of 2022**

*(Arising from the decision of the District Land and Housing Tribunal of Arusha Land Appeal No. 15 of 2021 Originating from Olmoti Ward Tribunal Land Application No. 10 of 2018)*

**ALLY HUSSEIN BUADA ..... APPLICANT**

**VERSUS**

**NATIONAL HOUSING CORPORATION ..... RESPONDENT**

**JUDGMENT**

22<sup>nd</sup> November, 2022 & 24<sup>th</sup> February, 2023

**TIGANGA, J.**

This is an appeal from the decision of the District Land and Housing Tribunal (hereinafter DLHT) in Land Appeal No. 15 of 2021 in which the respondent was appealing against the decision of the Ward Tribunal in Land Disputed No. 10 of 2018. The District Land and Housing Tribunal held after listening to both parties that, the Olmoti Ward Tribunal (hereinafter the ward tribunal) had no jurisdiction to entertain and the decide the case under section 37(1)(d) of the **Land Disputes Court Act** [Cap. 216 R.E 2019].

Aggrieved by the decision of the DLHT, the appellant appealed to this court by filing three grounds of appeal as follows;

1. That the Honourable Appellate Tribunal Chairperson erred in law to hold that the Ward Tribunal had no jurisdiction to entertain the dispute over the ownership of the land as between the parties herein.
2. That, upon making a finding that the law which denied the trial ward tribunal jurisdiction and confer the same to the High Court has been repealed and never replaced in 2005 way before the dispute between the parties herein arose, the Honourable Appellate Tribunal Chairperson erred in law to hold that the trial ward tribunal had no jurisdiction to entertain the land ownership dispute between the parties.
3. That the Honourable Appellate Tribunal chairperson erred in law and facts by ignoring the fact that section 37(1)(d) of the Land Disputes Courts Act confer jurisdiction to the High Court to entertain the dispute arising out of tenancy relationship between the tenants of the respondent and the respondent only and not any other dispute like this one between the parties herein.

With leave of the court the appeal was argued by way of written submissions. Parties were represented by learned counsel. The appellant was represented by Mr. Leserian Nelson, learned Advocate, while the respondent was represented by Mr. Aloyce D. Sekule, Principal State Attorney working with the respondent. In support of the appeal, the counsel for the appellant started with the third ground of appeal. He submitted that section 37(1)(d) Land Dispute Courts Act, 2002 which makes reference to the **Rent Restriction (Exemption), (Specified Parastatals) Order** G.N No. 41 of 1992 (hereinafter Rent Restriction Order, 1992) confers jurisdiction to the Court on cases arising out of tenancy between the respondent as a specified parastatal and its tenants.

The order was made under section 2(1)(b) of the **Rent Restriction Act 1984**, (the defunct Act), which was enacted to provide for the Rent Restriction and for establishment of Regional Housing Tribunal and Housing Appeal Tribunal and for related matters. Order 3 of the order have excluded the jurisdiction of other court all premises which the specified parastatal (the respondent being one of them) is a landlord from all the provision of the defunct Act relating to the Restriction on the amount of rent that may be charged or collected by the specified

parastatal is the landlord from the provision of section 12, 16, 17, 25,26 and 37 of the defunct Act. In his view, section 12 was providing for the powers of the Regional Housing Tribunal while sections 16 and 37 provided for the rent and regulation of tenancy.

Generally, he submitted that, the Act was regulating the land lord and tenant relationship. Now since the dispute between the parties is over the land ownership, then the tribunal was wrong in its findings that, the ward tribunal had no jurisdiction. Therefore, section 37(1)(b) of the Land Disputes Courts Act does not apply on cases relating to the ownership of land but to the issues related to tenancy.

He said the ward tribunal had jurisdiction under section 13(2) of the Land Disputes Courts Act as the dispute is founded on trespass to land, in his view therefore, the respondent which is the corporation can be sued or can sue before the Ward Tribunal. He prayed the court to hold and declare that, section 37(1)(d) which made reference to the order was only meant for the disputes arising out of tenancy landlord relationship, not in disputed founded on trespass or disputed ownership.

Arguing in support of the second ground of appeal, he submitted that, the order which listed the respondent as the specified parastatal was made

under the defunct Act, that is the Rent Restriction Act which was repealed in the year 2005 by section 30 of the **Written Laws Miscellaneous Amendment) No.2 Act of 2005**. In his view, the repeal of the defunct Act, had the effect of repealing the order made thereunder. Therefore, following the repeal of the Act, the respondent ceased to be the specified parastatal. Now since section 37(1)(d) of the Land Disputed Courts Acts conferred the High court with jurisdiction over the proceedings involving the specified parastatals, when the Order was repealed the said parastatal was no longer specified, therefore the proceedings against them could be instituted in any other court other than the High Court including the ward tribunal. In his view, the repeal of the Act and the Order made under it, made the part of section 37(1)(d) which refers to the order became inoperative.

Arguing in support of the first ground learned counsel submitted that, once the second and third ground of appeal are allowed then the first ground will automatically stand to be allowed and the opposite is also true. He prayed that the appeal be granted as prayed.

Responding in opposition of the appeal, Mr. Aloyce Sekule, Learned Principal State Attorney working with the respondent, seems to have

consolidated all three grounds of appeal and argued them together. In his bid to oppose the appeal, he submitted that, the repeal of the defunct Act does not preclude the respondent from the list of the specified Government Parastatal as the repeal of the Act did not inoperate the order made under it. Therefore, in his view the Rent Restriction Order, of 1992 as refereed in section 37(1)(d) of the Land Disputes Courts Act, (supra) which confers jurisdiction to the High Court in all cases involving the specified Government Prastatals and where there is no High Court operative or establish in the District, then the District Land and Housing Tribunal may exercise such jurisdiction under section 37(2) of the Land Disputes Courts Act, as the exception to the general rule.

He submitted that Arusha District in which the disputed land is located has the High Court operative in the area. Therefore, it is the High Court which has jurisdiction.

To cement on that, he refereed this court to section 37(1)(d) of the Land Disputes Courts Act, (supra)as amended by section 29 of the **Written Laws, Miscellaneous Amendment (No.2) No. 11 of 2005** and section 7 of the **Government Proceedings Act** [Cap 5 R.E 2019] and the decision in the case of Consolidated Civil Revision No. 2,3,4,5 and 6 of 2010 between

**Olam Tanzania Limited and 3 Others vs Selemani S. Selemani and 4 Others**, CAT- at Mtwara; in which it was held that, under section 37(1)(d) of the Land Disputes Courts Act, all cases which involve the Government Parastatals specified under the Rent Restriction Order, 1992 have their jurisdiction conferred to the High Court. Therefore, he submitted that, the appellate chairperson of the Tribunal was correct when she allowed the appeal on that ground. He prayed that, the appeal be dismissed with cost.

In rejoinder, the appellant's counsel reiterated what he actually submitted in chief. He while countering the argument submitted that, the authority in Consolidated Civil Revision No. 2,3,4,5 and 6 of 2010 between **Olam Tanzania Limited and 3 Others vs Selemani S. Selemani and 4 Others**, CAT- at Mtwara is very much in support of his arguments that section 37(1)(d) of the Land Disputes Courts Act vests jurisdiction to the High Court to deal with the matter under the Rent Restriction Order, 1992, where the disputes relates the landlord and the tenants. In his view, since the dispute at hand was not of the nature of landlord and tenant but trespass, therefore, not falling under the category of cases which the High Court has exclusive jurisdiction.

On the other ground he insisted that the order which specified the respondent, was made under the defunct Act, and following the repeal of the Act then, that automatically cause the Order made under it to be repealed. Thus, according to him, the repeal of the order meant that, the respondent ceased to be the specified parastatal.

Regarding the applicability of the section 7 of the **Government Proceedings Act**, [Cap 5 R.E 2019] that proceedings against the government which includes government corporations must be instituted to the High Court, he submitted that, the argument is a misconception because the law started to apply on 21<sup>st</sup> February 2020 when it was amended while before that, all government institution could be sued or could sue in their corporate names without necessarily impleading the Attorney General. In his view it was also introduced after the case of **Olam Tanzania Limited and 3 Others vs Selemani S. Selemani and 4 Others**, CAT- at Mtwara, and after the defunct Rent Restriction Act had been repealed in the year 2005 by Written Law (Miscellaneous Amendment) (No.2) Act, 2005. He said that, the Government Proceedings Act does not apply to this case. The counsel called upon the court to allow the appeal basing on the three grounds of appeal.



I have given a critical consideration to the arguments presented by both counsel the main issue here is one, whether the District Land and Housing Tribunal was justified to find that the Ward Tribunal had no jurisdiction to entertain the land disputes between the appellant and the respondent on the ground that, the respondent was a specified public parastatal listed under Rent Restriction Order, 1992.

Moreover, looking at the arguments by the parties, I find some other secondary issues which are calling for determination.

- i) Whether the respondent was on the list of the specified public corporation under the Rent Restriction (Exemption) (Specified Parastatals) Order, 1992, GN. No. 41 of 1992 made under the Rent Restriction Act (supra).
- ii) Whether the provision of section 37(1)(d) of the Land Dispute Act confers exclusive jurisdiction to the High Court while ousting jurisdiction of other tribunals.
- iii) Whether the exclusive jurisdiction to the High Court under section 37(1)(d) above mentioned give the High Court exclusive jurisdiction in tenancy cases only.

- iv) If the answer to the 1<sup>st</sup> issue is in the affirmative, then whether the repeal of the defunct Rent Restriction Act affected the order made under it and made it inoperative.
- v) If the second issue is decided in the affirmative, whether the public corporation listed under the order ceased to be specified parastatal.
- vi) Whether the amendment of the Government Proceedings Act amended in 2020 applies to the proceedings commenced in 2018

From the arguments by the counsel for the parties, the following facts are very clear some of which will assist to resolve some of the issue as they are not contentious. Sometimes in July 2018 the Olmoti Ward Tribunal received a complaint from about 48 people residents of Mirongoine Street in Olmoti Ward who were complaining against the respondent to have exceeded border and encroached the land owned by the complainant. The Ward Tribunal summoned the respondent but instead of going to stand the trial, it wrote a letter informing the Ward Tribunal that, it had no jurisdiction to entertain the case on two grounds. **One**, that Rent Restriction Order, 1992, made under the Rent Restriction Act (supra) vests jurisdiction of cases of this nature which involve the specified public parastatal to the High Court.

**Two**, that the pecuniary value of the land in dispute is high above the jurisdiction of the ward tribunal but it falls to the jurisdictional ambit of the High Court. However, despite that warning, the Ward Tribunal proceeded to hear the dispute *ex parte* and found in the favour of the complainants thereat who is the current appellant. Following that decision, the respondent appealed to the District Land and Housing Tribunal basing on the similar ground and the appellate DLHT allowed the appeal.

Now having summarized the fact of the case deciphered from the record, I now start to resolve the first issue. After a thorough considerations of the arguments, it is clear and parties are in agreement that, via Rent Restriction Order, 1992, made under the Rent Restriction Act (*supra*), the respondent was among the specified public corporation. That, has not only been proved by the records but also by the submissions made by the counsel for the parties. That being the case, then the first issue is resolved in the affirmative.

Regarding the second issue which is whether the provision of section 37(1)(d) of the Land Dispute Act confers exclusive jurisdiction to the High Court while ousting jurisdiction of other tribunals. It is true that, reading the provision of the above referred section, it really confers exclusive jurisdiction

to the High Court in all cases involving the specified parastatals. This fact has been conceded by the counsel for both parties. That goes without saying that, the provision confers exclusive jurisdiction to the High Court in the cases which involve the specified parastatals. The second issue is thus resolved in affirmative.

The next question is whether, the exclusive jurisdiction conferred to the High Court was limited to the cases arising in the landlord and tenant relationship only? On this issue, parties are not at agreement. While the counsel for the appellant argues that, the statute confers jurisdiction to the Court on cases arising out of tenancy between the respondent as a specified parastatal and its tenants, the respondent is of the view that, the law does not limit the jurisdiction of the High Court to the land lord and tenancy relationship, but it is for all proceedings, that is, the proceedings of all nature.

As rightly submitted by Mr. Sekule that, all courts are creature of statutes, therefore their jurisdictions are statutory. See the case of **Shyam Thanki and Others versus New Palace Hotel** [1971] 1 EA 199 at 202. This means that, in order to ascertain the jurisdiction of the court we have to look to the statute which confers the jurisdiction of that court. This calls

for the court to employ the statutory interpretation technique to interpret the provision at hand.

In that course, I would like to be guided by the authority in the case of **Pan African Energy Tanzania Limited vs Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 172 of 2020, CAT, Dar Es Salaam, in which the Court also borrowed leaf from the excerpt in the **Introduction to Interpretation of Statutes**, by **Avtar Signh** and **Harpreet Kaur**, 4<sup>th</sup> Edition. The learned Authors observed at pages 5 and 6 as follows: -

*"The most and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. In the court of law what the legislature intended to be done or not be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication ..." Ordinarily, the determining factor of intention of a statute is the language employed in the statute. Gajendragadkar J, said in a case that 'the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself'..."*

The court further relied on the authority in the case of the **Republic vs Mwesige Geoffrey and Another**, Criminal Appeal No. 355 of 2014 (unreported) the Court said:

*"...in the familiar canon of statutory construction of plain language, when the words of a statute are unambiguous, judicial inquiry is complete because the courts must presume that a legislature says in a statute what it means and means in a statute what it says there. As such, there is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation."*

In this case, and particularly on the issue at hand, we must look at the provision of section 37(1)(d) of the Land Disputes Courts Act which I reproduce hereunder for purposes of easy reference.

*"37(1) subject to the provisions of this Act, the High Court shall have and exercise original jurisdiction;*

*(d) in all proceedings involving public corporation specified in the Rent Restriction Rent Restriction (Exemption) (Specified Parastatals) Order, 1992, GN. No. 41 of 1992 and in such other disputes of national interest which the minister may by notice published in the gazette specify."*

The provision states that **in all proceedings involving public corporation specified in the** Rent Restriction Order, 1992, the law has not specified a certain category of the proceedings, neither has it put any limit to certain cases as the counsel for the appellant requires this court to believe. It has clearly stated that **in all** proceedings involving the specified parastatals specifies under the said order. The provision is very plain, unambiguous and straight forward, the appellant has no base upon which to invite this Court to find as to his proposition. That being the case, I find that the provision is clear, it confers exclusive jurisdiction to the High Court in all proceedings relating to the specified public parastatals listed and specified under the Rent Restriction Order, 1992, not in the proceedings emanating in the landlord and tenancy disputes only. The third issue is thus resolved in the negative.

Next is the fourth issue which is whether the repeal of the defunct Rent Restriction Act affected the order made under it and made it inoperative. The appellant was of the view that, following the repeal of the Rent Restriction Act in the year 2005 by section 30 of the **Written Laws Miscellaneous Amendment) No.2 Act of 2005** all orders including **GN. No. 41 of 1992** made under it also were by necessary implication repealed

and that had the effect of making the said specified government parastatal unspecified. On that point, the counsel for the respondent in his bid to oppose the appeal, submitted through his counsel that, the repeal of the defunct Act does not preclude the respondent from the specified Government Parastatal as the repeal of the Act did not inoperates the order made under it.

In addressing this issue, I find it apposite to point out some undisputed facts which will assist me in the determination of this issue. The respondent was listed as one of the specified government parastatals vide the Rent Restriction Order, 1992. When the Land Disputes Act Cap 216 was enacted in the year 2002, it under section 37 (i) (d) conferred the High Court with exclusive jurisdiction over all proceedings related to the specified government parastatals listed under the Rent Restriction Order, 1992 made under the Rent Restriction Act, No. 17 of 1984 which was repealed under section 30 of the Written Laws (Miscellaneous Amendment) (No.2) Act No. 11 of 2005. The repealing Act did not say anything regarding the orders made under the repealed law. Also, it did not amend the **Land Disputes Courts Act** [Cap 216 R.E 2002]. Further to that, when the Parliament was also seized with the opportunity to ament the Land Dispute Courts Act in



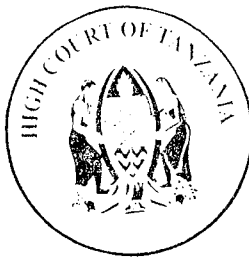
2017 via Act No. 13 of 2017, it did not amend the law to remove from section 37(1)(d) the provision referring on Rent Restriction Order, 1992 if at all the same was repealed together with its parent Act. Lastly, when the Parliament had the opportunity to revise the law under the Law Revision Act, in 2019, it did not rectify the inclusion of the above specification order in section 37(1)(d) of the Land Disputes Courts Act. This, by all necessary implication takes me to believe that, the law makers recognize the existence of the GN No.41 of 1992 despite the fact that the law upon which it was made was repealed. Not only the parliament which recognizes the existence of the said order, but also the Court of Appeal of Tanzania does.

One of the instances of the Courts recognition of its existence is the case of **Olam Tanzania Limited and 3 Others vs Selemani S. Selemani and 4 Others**, Consolidated Civil Revision No. 2,3,4,5 and 6 of 2010, CAT-at Mtwara which was decided five years after the repeal of the Rent Registration Act, from page 5-6 of the judgment still recognizes the order i.e GN. No. 41 of 1992 to still be valid and the respondent to still be the specified government parastatal. That being the position of the law, I find that the last two issues are resolved in the negative, thus having the effect of failing

of the whole appeal. That said, the whole appeal fails, it is consequently dismissed with costs.

It is accordingly ordered.

**DATED** and delivered at **ARUSHA** this 24<sup>th</sup> February, 2023



A handwritten signature in black ink, appearing to read "J. C. Tiganga", is written over a horizontal line.

**J. C. TIGANGA**  
**JUDGE**