

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

LAND REVISION No. 6 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land
Application No. 52 of 2021)*

BENADETHA MWITA APPLICANT

Versus

CHRISTOPHER CHACHA

RHOBI MGAYA

NICODEMUS KICHERE

NYANGI MIREMO

JUMA IMONYERO



..... RESPONDENTS

RULING

09.03.2023 & 09.03.2023

Mtulya, J.:

In the present revision, the applicant complains on two (2) distinct decisions of the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 52 of 2021** (the application), namely: first, a ruling on a point of the law on resolved on 14th June 2022, and second, determination of the final order of the tribunal delivered on 18th October 2022, as reflected in the 2nd and 5th paragraphs of the Affidavit of Benadetha Mwita (the applicant). However, when the application

was scheduled today for hearing and after short perusal of the record, and consultations of the parties, the first decision on the points of law was not reflected on the record, be it in proceedings or separate page. The record shows that the applicant had preferred the application at the tribunal and it was protested at preliminary stages with three (3) points of objection filed by **Mr. Daud Mahemba**, for the respondent, on 8th July 2021.

The points were well received by the applicant and the and on 1st March 2022, a scheduling order was set by the tribunal for written submissions for and against the application. The order displayed for delivery of the decision on 4th April 2022. The parties performed their duties by registering necessary materials for and against the points. However, on the indicated judgment date, the record is silent on what transpired. The proceedings shows that the tribunal was invited again on 22nd April 2022 in presence of the applicant and in absence of all respondents and the chairman ordered hearing of the suit on 14th June 2022, and all parties were present save for the fifth respondent. The record shows further that the proceedings took their course up to 18th October 2022, where the tribunal delivered its decision in the application and ordered that:

*Mahakama ya Wilaya Musoma katika Revision No. 10 of 2020 ilielekeza Shauri kuanza upaya (**trial de novo**), lakini badala yake Mleta Maombi akafungua shauri hapa. Shauri hili linaondolewa hapa Mahakamani.*

It was unfortunate that the learned chairman did not specify whether he determined the three raised points of protest or main suit on merit, and if it is the points of protest which point among the three raised points. Today morning Mr. Mahemba, learned counsel for the respondents appeared in this court and contended that the respondents had raised three points of objection at the tribunal and registered necessary materials for and against the contest, but the tribunal declined to deliver its decision.

Regarding available remedies Mr. Mahemba prayed all proceedings be quashed and judgment nullified and record be remitted to the tribunal for determination of the raised points. According to Mr. Mahemba there is no need to order costs as the wrong was caused by the tribunal.

The applicant on her part did not resist the prayer, but prayed for costs as her farm was sold by the respondents without

any consultation and in the disputed land there are trees and graves of her deceased relatives.

The law regulating preliminary objection requires points of objection to be determined before moving into the merit of the matter. There is dozens of precedents on the subject (see: **Theobald Kainam v. The General Manager, KCU Ltd**, Civil Application No. 3 of 2003; **Ashura Abdulkadri v. The Director of Tilapia Hotel**, Civil Application No. 2 of 2005; **Meet Singh Bhachu v. Gurmit Singh Bhachu**, Civil Application No. 144/02 of 2018; **Method Kimomogoro v. Registered Trustees of TANAPA**, Civil Application No. 1 of 2005).

The Court of Appeal in **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016, at page 12, had resolved that:

It is settled law that an objection on point of law challenging the jurisdiction of the court can be raised at any stage ... and it has to be determined first before proceeding to determine the substantive matter.

Similarly, the Court of Appeal has settled that a matter not decided by subordinate courts cannot be determine by higher

courts. That is well displayed in the practice in the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018, in brief, that:

It is settled position of the law that a matter not decided by subordinate courts cannot be determine by the [High Court]....the jurisdiction of courts in an appeal is to consider and examine matters that have been considered and decided by subordinate courts.

Following the practice of our superior court and noting the power of this court under section 43 (1) (b) & (2) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] (the Act), and being aware that the three (3) raised points are still intact, I have decided to nullify the impugned order of the tribunal in the application delivered on 18th October 2022, and set aside all proceedings from 22nd April 2022 to 18th October 2022 for want of proper record of the tribunal. I do so without cost as the wrong was committed by the tribunal.

As to the way forward, I direct the case file be reverted to the tribunal for determination of all three (3) raised points of objection raised by Mr. Mahemba. The tribunal should resolve

the same within sixty days from today, 8th March 2023, without any further delay.

It is so ordered.




F. H. Mtulya

Judge

09.03.2023

This ruling was delivered in Chambers under the Seal of this court in the presence of the applicant, **Benadetha Mwita** and in the presence of the first to the fourth respondents and their learned counsel, **Mr. Daud Mahemba**.


F. H. Mtulya

Judge

09.03.2023