

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 20 OF 2022

(Appeal from the judgment and decree of the District Land and Housing Tribunal for Babati at Babati in Land Application No. 4 of 2015)

LONINGO LUCAS.....1ST APPELLANT

MESHACK PAULO.....2ND APPELLANT

VERSUS

HALIMA DAI.....RESPONDENT

RULING

28/3/2023 & 31/3/2023

BARTHY, J.

This appeal arises from the judgment and decree of the District Land and Housing Tribunal for Babati sitting at Babati (henceforth the trial tribunal) in Land Application No. 4 of 2015.

Briefly, the facts culminating to the matter before the trial tribunal are that, initially the respondent had sued the first appellant for trespass over a land measuring four acres situated at Endakiso village within Babati District in Manyara (hereinafter referred to as the suit land). It is on record that the hearing of the matter commenced on 26/2/2015 in which the respondent testified as PW1, she also called another witness who testified as PW2. After closure of the respondent's case, the first appellant defended himself in which he claimed to have purchased the suit land from the second appellant.

The trial tribunal therefore ordered the second appellant be joined in the matter and the amendments of the pleading were made to that effect. The appellants lodged joint amended written statement of defence.

It is on record that after the amendments were made, hearing of the matter was to start afresh. However, no further hearing was ever made due to frequent adjournments caused by non-appearance of parties and change of presiding chairpersons.

The last chairperson who took over the matter, following long adjournments and non-appearance of the parties went ahead to compose the judgment basing on the previous records which were available, before the amendments was made. In that decision of the trial court it was decided in favour of the respondent who was declared to be a lawful owner of the suit land.

The appellants were aggrieved with the decision of the trial tribunal; hence they preferred the instant appeal with two grounds of appeal which I will not reproduce here.

On the hearing date the appellants were represented with Mr. Pascal Peter learned advocate, whereas the respondent appeared in person. The appeal was disposed of orally. However, in the course of composing the judgment of this matter, I came across one pertinent issue which necessitated the re - opening up of the proceedings.

As the record revealed that, on the amended joint written of statement of defence, the appellants raised two preliminary objections to the effect that;

- i. That the application is bad in law since the applicant has no locus standi.*
- ii. That the amended application is bad in law since the applicant fail to abide with the order of amendment*

granted by the tribunal.

Again, the records reveal that, the trial tribunal ordered the said preliminary objections to be disposed of by written submissions and parties duly complied with the schedule of the court.

However, the trial tribunal did not deliver the ruling in respect of the said preliminary objections. Hence, I invited the parties to address the court on propriety or otherwise on the omission by the trial tribunal to deliver ruling on the preliminary objections.

Mr. Pascal Peter argued that, he did not represent the appellants during the initial stage of the case before the trial tribunal. He admitted that the preliminary objections were raised by the appellants and the parties dutiful filed their written submissions but no ruling was delivered in respect of the preliminary objections.

He further argued that, since no ruling was delivered by the trial tribunal, then the proceedings that followed were illegal and ought to be nullified. He added that the remedy therefore is to expunge the judgment and decree and remit back the file to the trial tribunal for determination of the same.

On the respondent's submission she recalled to have filed the written submission as required. However, apart from the decision that was delivered by the trial tribunal on 28/11/2022, the respondent did not recall of any ruling to have been delivered by the trial tribunal in respect of the preliminary objections prior raised.

With respect to the arguments of the parties and having gone through the records of the trial tribunal, this court was to determine to whether the failure of the trial tribunal to deliver its ruling in respect of preliminary objections was fatal.

It is a settled principle that once a preliminary objection is raised, it must be determined first before the substantive case is heard and determined. This position was underscored in the decision of **Thabit Ramadhan Maziku and Kisuku Salum Kaptula v. Amina Khamis Tyela and Mrajis wa Nyaraka Zanzibar**, Civil Appeal No. 98 of 2011, in which the court held that;

The law is well established that a Court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it.

In the case of **Bank of Tanzania Ltd v Devran P. Valambia**, Civil Application No 15 of 2002 (CAT) (unreported) the Court observed:

"The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of the application because there is a point of law that will dispose of the matter summarily."

In the instant matter the learned trial chairperson failed to deliver ruling on preliminary objections before the trial. In the same stance, the Court of Appeal in the case of **Thabit Ramadhan Maziku and Kisuku Salum Kaptula v. Amina Khamis Tyela and Mrajis wa Nyaraka Zanzibar** [supra] observed thus;

With respect, therefore, the failure by the learned Resident Magistrate with extended jurisdiction to deliver the ruling on the preliminary objection which he scheduled on 16/9/2009 constituted a colossal procedural flaw that went to the root of the trial. It matters not, whether it was inadvertent or not. The trial court was duty bound to dispose of it fully, by pronouncement of the Ruling before dealing with the merits of the suit. This

it did not do. **The result is to render all the subsequent proceedings a nullity.** [Emphasis added].

The similar position was reiterated in the case of **Deonesia Onesmo Muyoga & others v Deonesia Onesmo Muyoga** Civil Appeal No. 219 of 2020 (unreported), in which the trial court did not determine the preliminary objection raised hence the subsequent proceedings were declared a nullity.


In the instant matter since the trial tribunal did not deliver the ruling on the preliminary objections, therefore it has vitiated the subsequent proceedings from 19/6/2017. Equally the subsequent proceedings and judgment delivered by the trial tribunal are nullity therefore, it is quashed and set aside.

The matter is hereby remitted to the trial tribunal for determination of the preliminary objection before hearing the matter on merit. I further order that the ruling of the tribunal be expedited as soon as possible owing to the fact that the matter has been pending in court since 2015.

In the circumstances of this case, I will not make an order as to costs.
It is so ordered.

Dated at Babati this 3rd April 2023.




G. N. BARTHY,
JUDGE
3/4/2023

COURT: Ruling delivered this 3rd of April, 2023 in the presence of the 1st Appellant and the Respondent and in the absence of the 2nd Appellant.

B.A.MPEPO,
Deputy Registrar
3/4/2023