

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB- REGISTRY)
AT MWANZA

MISC. LAND APPEAL No. 82 OF 2022

(Originating from the decision of Ng'haya Ward Tribunal in Land Application No. 02 of 2020 and the District Land and Housing Tribunal for Mwanza at Mwanza in Misc. Land Appeal No. 61 of 2021)

SAMWEL SHITEBO----- APPELLANT

VERSUS

PASTORY NGÉLA MASHALA----- RESPONDENT

JUDGMENT

Last Order date: 06.04.2023
judgement Date: 27.04.2023

M. MNYUKWA, J.

The Appellant Samwel Shitebo appealed against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza in Misc. Land Application No. 61 of 2021 which was held in favour of the respondent. In the record, it goes that; the parties had their dispute before the Ng'haya Ward Tribunal in Land Application No. 02 of 2020 which was decided in favour of the respondent on 23.06.2020.



Dissatisfied, the respondent in this appeal, approached the DLHT for Mwanza at Mwanza and filed Appeal No. 61 of 2021 against the decision of the Ng'haya Ward Tribunal in Land Application No. 02 of 2020. The DLHT determined the matter and decide in favour of the respondent in this appeal. Dissatisfied, the appellant appealed before this court with 5 grounds of appeal thus:-

- 1. That, the District Land Tribunal erred in law and in fact by holding firmly the wrong and misleading concept that the Appellant was allocated and owned only one acre for 26 years without conclusive evidence.*
- 2. That, the District Land Tribunal erred in law and in fact for failure to realize the truth that the Land Application was Res-judicata and was hopelessly time barred.*
- 3. That, the District Land Tribunal erred in law and in fact for disregarding and closing the eyes against breaching of the Law which the Ward Tribunal did intentionally for several times out of its jurisdiction.*
- 4. That, the District Land Tribunal erred in law and in fact to lead astray purposely the volume of the case for personal interests without fearing God and peaceless life thereafter.*
- 5. That, the District Land Tribunal erred in law and in fact by holding the concoct of the respondent and ignoring the appellant's averments together with his oral and documentary evidence.*

By the order of this court, the appeal was argued orally. At the hearing, both parties appeared in person unrepresented.

The appellant was the first to submit and he prays this court to adopt his petition of appeal and form part of his submissions. The appellant briefly submitted that, the case before the DLHT was res-judicata. He went on that, the ward tribunal was not vested with jurisdiction to determine the dispute of 8.5 acres of land for the reason that the subject matter was beyond its pecuniary jurisdiction of 3,000,000/=. He prays this appeal to be allowed.

Responding, the respondent prays this court to adopt his reply to the petition of appeal and form part of his submissions. He went on to submit that, the matter was not res judicata and it was not tried with the competent tribunal. He went on that, the land in dispute belongs to his father and the appellant rented it and did not return it after the rent period expired. He insisted that the ward tribunal was vested with jurisdiction and prayed the appeal to be dismissed.

Rejoining, briefly the appellant insisted that it is not true that he rented the land from the respondent's family.

After the submissions by the parties, I am now placed to determine whether this appeal has merit.



In the determination of this appeal, I will start with the 2nd ground that, the District Land and Housing Tribunal erred in law and in fact for failure to realize the truth that, the Land Application was Res-judicata and was hopelessly time barred. The appellant claims that, the same DLHT previously determined the matter and gave its verdicts and the judgment which is the subject to this appeal is res-judicata. As the principle of law and leading authorities are at one, that in order for the plea of res judicata to successfully operate, the set out conditions provided under section 9 of the Civil Procedure Code, Cap 9 R.E 2019 must co-exist. The Court of Appeal in **The Registered Trustees of Chama Cha Mapinduzi vs Mohamed Ibrahim Versi and Sons**, Civil Appeal No. 16 Of 2008, stated that, for the doctrine of res- judicata to succeed the following must be observed:-

- (i) The former suit must have been between the same litigating parties or between parties under whom they or any of them claim;*
- (ii) the subject matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and subsequently in issue in the former suit either actually or constructively;*
- (iii) the party in the subsequent suit must have litigated under the same title in the former suit;*

- (iv) the matter must have been heard and finally decided;*
(v) that the former suit must have been decided by a court of competent jurisdiction.

See also, **Umoja Garage v. National Bank of Commerce Holding Corporation**, Civil Appeal No. 3 of 2001.

The object and public policy behind the doctrine of res judicata is to ensure finality in litigation and protect an individual from a multiplicity of litigation. In the appeal at hand, the parties filed Land Appeal No. 123 of 2018 before the DLHT which was decided on 20.04.2020 but was not determined on merit. Therefore, it was proper for the appellant to institute application No. 61 of 2021 which was determined on merit and subject to this appeal. Therefore, based on the circumstance of this appeal, the doctrine of res judicata cannot be invoked and therefore this ground lacks merit.

On the 3rd ground, the appellant claims that the ward tribunal determined the matter without being clothed with pecuniary jurisdiction. The respondent on his reply insisted that, the tribunal had jurisdiction to determine the matter. The law is settled in **Fanuel Mantiri Ng'unda vs. Herman M Ngunda**, Civil Appeal No. 8 of 1995, CAT that: -

"The jurisdiction of any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases



of different nature...the question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case."

See also **Consolidated Holding Corporation Ltd vs. Rajani Industries Ltd and Bank of Tanzania**, Civil Appeal No. 2 of 2003, CAT.

In this appeal, the appellant claims that, the ward tribunal was not vested with jurisdiction to try the matter. The provision of section 15 of the Land Court Disputes Act Cap. 216 RE: 2019 provides clearly that the pecuniary jurisdiction of the ward tribunal is Tshs. 3,000,000/= . Going to the records of the ward tribunal, what is claimed is Tshs. 300,000/= which was given to the respondent family and in exchange the appellant was rented the piece of land for farming on a period of 6 years. There is no evidence of valuation that the subject matter has a value of more than the money which was transacted for this court to rely on and fault the findings of the ward tribunal and the 1st appellate court. As it stands in **Godfrey Sayi vs. Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2012 the Court of Appeal insisted that:-



"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities."

Therefore, the appellant had a legal and evidential burden to show that the subject matter was worth more than Tshs. 3,000,000/= for this court to hold that the ward tribunal lacked jurisdiction and therefore this ground lack merit.

As for the remaining grounds No. 1st, and 5th grounds were not determined by the trial court and the 1st appellate court and therefore cannot be determined by this court. The Court of Appeal elaborately stated in the case of **Westone s/o Haule v The Republic**, Criminal Appeal No 504 of 2017, the Court of Appeal said that:

"Our law is settled that matters which were not canvassed by the first appellate court cannot find way in the second appellate Court unless it relates to a legal issue."

And as to the 4th ground of appeal, does not disclose a matter of law or fact worth of determination, the same lacks merit and it is accordingly dismissed.

Finally, as stated in **North Mara Gold Mining Ltd vs Emanuel Mwita Magesa**, Civil Appeal No. 271 of 2019, and this being a second



appellate court, it is a settled position that this court can only interfere with the findings of the lower courts in the matter of laws and misapprehension of justice. Based on the principle stated above, I see no reason to fault the decision of the ward tribunal and the 1st appellate court.

Consequently, the appeal is dismissed with no order as to costs.

It is so ordered.




M. MNYUKWA
JUDGE
27/04/2023

Court: The right of appeal is explained to the parties.


M. MNYUKWA
JUDGE
27/04/2023

Court: Judgment delivered on 27/04/2023 in the presence of both parties.


M. MNYUKWA
JUDGE
27/04/2023