

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

**[LAND DIVISION]**

**AT ARUSHA**

**MISC. LAND APPEAL NO. 24 OF 2022**

*(C/f the District Land and Housing Tribunal for Mbulu at Dongobesh, Land Appeal No. 1 of 2022,  
Originating from Kainam Ward Tribunal, Application No. 2 of 2021)*

**YAKOBO GOBRE ..... APPELLANT**

**Versus**

**RAPHAEL DANIEL ..... RESPONDENT**

**JUDGMENT**

*22<sup>nd</sup> February & 28<sup>th</sup> April 2023*

**Masara, J.**

The crux of the dispute leading to this appeal is a piece of land measuring 29 paces length and 22 paces width, located at Ayaslansla hamlet, Hareabi village, Kainam ward within Mbulu District (hereinafter "the suit land"). According to the Appellant, he was in peaceful occupation of the suit land until 15/04/2021 when the Respondent herein trespassed in the same and uprooted sisal plants which marked the Appellant's border in respect of the suit land. The Appellant referred the dispute in Kainam Ward Tribunal (hereinafter "the trial tribunal"). In his evidence in the trial tribunal, the Respondent claimed to be the lawful owner of the suit land in that he inherited the same from Daniel Gobre, his late father.

After hearing the evidence from both sides and visiting the *locus in quo*, the trial tribunal held the Appellant's evidence weightier to that of the Respondent. The Appellant was declared the lawful owner of the suit land. The Respondent was ordered to give vacant possession of the suit land with immediate effect. The Respondent was unamused by the trial tribunal's decision. He challenged it through an appeal in the District Land and Housing Tribunal for Mbulu (hereinafter "the appellate tribunal").

The appellate tribunal reversed the decision of the trial tribunal. The Respondent was, in turn declared the lawful owner of the suit land. The basis of the appellate tribunal's decision was that the Appellant did not prove how he acquired the suit land unlike the Respondent and his witnesses, who managed to prove that the Respondent inherited the suit land from his father. The Appellant was dissatisfied by that decision; hence this appeal on the following grounds, reproduced verbatim:

- a) That, the District Land and Housing Tribunal of Mbulu at Dongobesh in Appeal No. 1 of 2022 erred in law and in fact in proceeding hearing the appeal while it has no jurisdiction;*
- b) That, the District Land and Housing Tribunal of Mbulu at Dongobesh in Appeal No. 1 of 2022 erred in law and in fact by failure to give a proper interpretation of section 45(c) of the Written Laws*

*h) That, the District Land and Housing Tribunal of Mbulu at Dongobesh in Appeal No. 1 of 2022 erred in law and in fact by failure to appreciate that the proceedings of the ward tribunal was tainted with illegalities hence nullifying all the decision made thereafter.*

At the hearing of the appeal, the Appellant was represented by Mr Gwakisa Sambo, learned advocate, while the Respondent appeared in person, unrepresented. When the appeal came up for hearing, it was resolved that the appeal be disposed of through filing of written submissions.

Submitting on the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal combined, Mr Sambo averred that section 45(c) of the Written Laws (Miscellaneous Amendment) Act, No. 3/2022 amended the Land Disputes Courts Act (hereinafter “the LDCA”) by stripping off powers of the ward tribunals to adjudicate land matters. That the said Act was published through G.N No. 41 and it became operational on 11/10/2021. Taking into account the retroactivity of the said provision, being a procedural law, the trial tribunal had no power to deliver judgment on 16/12/2021. To support his contention, Mr Sambo relied on the Court of Appeal decision in **Lala Wino vs Karatu District Council, Civil Application No. 132/02/2018** (unreported). He could not fathom reasons that made the appellate tribunal chairman to dissent from the assessors’ opinions as both of them opined that the trial tribunal had no

jurisdiction to adjudicate the matter. Mr Sambo urged the Court to consider that jurisdictional objection is fundamental and can be raised at any stage including at this second appellate stage. To back up his submission, he relied on the case of **Gem and Rock Ventures vs Yona Hamis Mvutah, Civil Reference No. 1 of 2010** (unreported)

Submitting in support of the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal simultaneously, Mr Sambo stated that the record of the ward tribunal did not comply with the law, since the gender of members of the trial tribunal who participated in the hearing of the matter was not indicated on record. That, in order to ensure compliance of the law, names of members, their signatures and gender of those who participated at the hearing in the ward tribunal, must be reflected in the proceedings as one cannot assume gender by looking at one's name. To support his averment, he referred to the decision of this Court in **Kasimu Ngoroka vs Benard Masembula, Misc. Land Appeal No. 3 of 2016** (unreported). He called upon the Court to find that the trial tribunal was not properly constituted because, even in the judgment, names of the members were indicated without revealing their gender, which is fatal.

Submitting on the 5<sup>th</sup> and 8<sup>th</sup> grounds of appeal jointly, Mr Sambo fortified that the secretary of the trial tribunal participated and appeared in the

proceedings and judgment of the trial tribunal, with his stamp affixed, while he is not a member of the trial tribunal. To reinforce his contention that the secretary is not a member of the ward tribunal, he made reference to the cited case of **Kassimu Ngoroka** (supra). Further, Mr Sambo faulted the visiting of the *locus in quo* stating that the procedure of visiting *locus in quo* was not adhered to. He maintained that after visiting the *locus in quo*, the trial tribunal did not reconvene, and the findings at the *locus in quo* were not read before the parties which is against the law.

Although it was admitted that ward tribunals are not tied up with technicalities at the expense of substantive justice, Mr Sambo was of the view that the pointed-out illegalities go to the root of the matter and cannot be salvaged by the overriding objective principle. He made reference to the decision in **William Stephen vs Ms Leah Julius, Civil Appeal No. 65 of 2013** (unreported) to reinforce his contention.

Regarding the 6<sup>th</sup> and 7<sup>th</sup> grounds of appeal, it was Mr Sambo's contention that the evidence of the Appellant and his witnesses at the trial tribunal proved on the balance of probability that he was the lawful owner of the suit land. That was also coupled with the evidence at the *locus in quo* which, in

his view, showed clearly that it was the Appellant who was the lawful owner of the suit land. He summed up by praying that the appeal be allowed with costs and the decisions of both the appellate and the trial tribunals be quashed and set aside.

On his part, the Respondent challenged the submission by counsel for the Appellant generally. He supported the decision of the appellate tribunal stating that it was justified and was within the confines of the law. According to the Respondent, the trial tribunal was well constituted. Regarding participation of the secretary in the tribunal proceedings and judgment, it was his view that it was not correct referring the Court to page 1 of the judgment. He prayed for dismissal of the appeal with costs.

Having outlined the submissions by the parties herein, it behoves me to decide on the merits or otherwise of this appeal. I have strenuously considered the records of both lower tribunals alongside the grounds of appeal. I have also scrutinized the submissions by counsel for the Appellant as well as that of the Respondent. Arising from the grounds of appeal and submissions thereof, I will determine the following issues: whether the trial tribunal had jurisdiction to entertain the dispute as it did; whether the trial

tribunal was properly constituted; whether there was proper evaluation of evidence and whether the first appellate tribunal was justified in its decision.

I will begin with the first issue on jurisdiction. This issue is deciphered from the 1<sup>st</sup>, 2<sup>nd</sup> and 8<sup>th</sup> grounds of appeal. It is the Appellant's contention that the trial tribunal had no jurisdiction to determine the dispute in Application No. 2 of 2021 following the amendment of the LDCA which striped off adjudicative powers from ward tribunals. This is disputed by the Respondent.

The question is whether the trial tribunal lacked jurisdiction to entertain the dispute in Application No. 2 of 2021 following the amendments above stated. It is not in dispute that Written Laws (Miscellaneous Amendment) (No.3) Act, 2021, which was passed and published through Government Notice No. 41 of 2021, became operational on 11/10/2021. The Act amended various laws, including the LDCA. Prior to the amendments, ward tribunals had adjudicative powers over land disputes as was provided for under sections 15 and 16 of the LDCA. After the amendments, sections 15 and 16 of the LDCA were repealed. The Act also amended section 13 of the LDCA, thereby establishing a mandatory procedure that every dispute to be filed in a district land and housing tribunal must first pass through a ward tribunal for mediation. With the amendments, the primary function of ward tribunals

remains to be that of mediating parties. In case mediation fails, the dispute is forwarded to the district land and housing tribunal for adjudication.

In the case at hand, the record shows that the dispute was filed in the trial tribunal on 06/07/2021 by the Appellant herein through a letter headed "*Yah: Madai ya Ardhi*". According to the handwritten records, on 23/09/2021 both the Appellant and the Respondent adduced their evidence. On 30/09/2021, witnesses for both the Appellant and those of the Respondent testified. On 21/10/2021, the trial tribunal visited the *locus in quo* and obtained evidence from neighbouring elders. On 04/11/2021, the trial tribunal convened to go through the recorded evidence with a view of preparing a judgment. The judgment was delivered on 16/12/2021.

According to the records of the appellate tribunal, when the tribunal chairman asked the assessors to give their opinions, they both opined that the trial tribunal had no jurisdiction to entertain the dispute. In his decision, the chairman disagreed with their opinions stating that by the time the LDCA was amended, the case had already gone through hearing.

There is no flicker of doubts that the amended provisions in the LDCA by the Written Laws (Miscellaneous Amendment) (No.3) Act, 2021, were procedural



in nature. It is a settled principle of law that when an amendment of the law affects a procedural step or matter, it acts retrospectively; unless a good reason to the contrary is shown. See for example the decision in the case of **S.S. Makorongo vs Severine Consiglio [2005] 1 EA 247**, where the Court made reference to an ancient decision of the defunct Court of Appeal for East Africa in the case of **Municipality of Mombasa vs Nyali Limited [1963] E.A. 371** in which the Court stated that:

*"Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation. In seeking to ascertain the intention behind the legislation the Courts are guided by certain rules of construction. One of these rules is that if the legislation affects substantive rights, it will not be construed to have retrospective operation unless a clear intention to that effect is manifested; **whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.** But in the last resort it is the intention behind the legislation which has to be ascertained and a rule of construction is only one of the factors to which regard must be had in order to ascertain that intention."* [Emphasis added].

In the same token, I agree with the Appellant's contention that the amendments were of a procedural nature. The next question is whether it operates to the extent of covering the case like the one at hand, which had already been heard at the time when the Act became operational. The

answer to this question can be discerned from the cited case of **Lala Wino vs Karatu District Council (supra)**, where the Court of Appeal quoted with approval the holding of the decision in **Benbros Motors Tanganyika Ltd. vs Ramanlal Haribhai Patel [1967] HCD No. 435** which had the following to say, while faced with similar scenario:

*"When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, **whether commenced before or after the passing of the Act.**"* [Emphasis added]

In **Lala Wino (supra)**, the Court referred to a passage in the book authored by A.B. Kafaltiya bearing the title: ***"Interpretation of statutes"***, 2008 Edition, Universal Law Publishing Co. New Delhi - India, at page 237, which stated, *inter alia*, as follows:

*"... When the legislature alters the existing mode of procedure, the litigant can only proceed according to the altered mode. It is well settled principle that 'alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.' The rule that 'retrospective effect is not to be given to laws' does not apply to statutes which only alter the form of procedure or the admissibility of evidence. Thus, amendments in the civil or criminal trial procedures, law of evidence and limitation etc; where they are merely the matters of procedure, **will***

***apply even to pending cases. Procedural amendments to a law, in the absence of anything contrary, are retrospective in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which action may be based accrued on an anterior date. Where a procedural statute is passed for the purpose of supplying an omission in a former statute or for explaining a former statute, the subsequent statute relates back to the time when the prior statute was passed. All procedural laws are retrospective, unless the legislature expressly says they are not.***”  
(Emphasis added)

The above authority is the position of the law in our jurisdiction. It entails that the Act operates retrospectively irrespective of whether the action commenced before, at or after passing the Act. Applying the above principle in the appeal at hand, the case in the trial tribunal was filed on 06/07/2021. It was heard on 23/09/2021 and on 30/09/2021. On 21/10/2021, the tribunal visited the *locus in quo*. Applying the retroactivity nature of the law, without even considering the dates the dispute was heard, at the time the trial tribunal visited the *locus in quo*, it had no jurisdiction as the amending Act came into operation on 11/10/2021. The same applies to the time of composing the judgment and delivering the same. The law applied to the

dispute when it became operational, whether it had come into the knowledge of the trial tribunal or not.

I therefore agree with Mr Sambo that the trial tribunal had no jurisdiction to entertain the dispute, following the amendments of the LDCA by the Written Laws (Miscellaneous Amendment) (No.3) Act, 2021, which stripped off its adjudicative powers. The power remained that of mediating the parties. That said and done, the first issue is resolved in the negative. Having ruled that the trial tribunal had no jurisdiction to entertain and determine the dispute, I desist from dealing with the rest of the issues, as the rest of the issues and grounds crumble automatically. Since the trial tribunal had no jurisdiction to determine the dispute, anything done thereof remains to be inconsequential.

Consequently, I find the appeal to be of merits. Since the trial tribunal had no jurisdiction to entertain the dispute, the decision of the appellate tribunal as well cannot be left to stand, since it stemmed from a nullity. I hereby invoke revisional powers conferred upon me by section 43(1)(b) of the LDCA to quash and set aside the proceedings of both the appellate tribunal and those of the trial tribunal, as well as the resultant decisions and decrees. If parties herein are still interested to pursue their rights over the suit land, they are at liberty to refer the dispute in a tribunal with competent

jurisdiction to determine the same in accordance with the law. Since no party is to blame for the ailment discussed hitherto, I direct that each party bears their own costs.



  
Y.B. Masara

**JUDGE**

28<sup>th</sup> April 2023