

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

LAND APPEAL NO. 29 OF 2021.

*[Arising from the District Land and Housing Tribunal for Tabora in
Land Application No. 07 of 2019.]*

JUMA HAMISI KIZITO.....APPELLANT

VERSUS

CRDB BANK PLC URAMBO BRANCH..... 1ST RESPONDENT

INDEPENDENT AGENCIES AND

COURT BROKERS LTD 2ND RESPONDENT

.....
JUDGEMENT
.....

Date of Last Order: 21/03/2023

Date of Delivery: 16/05/2023

AMOUR S. KHAMIS, J.

This appeal stems from Judgment and Decree of the District Land and Housing Tribunal for Tabora in Land Application No. 07 of 2019. The material background of the case happened when the respondents conducted a public auction of the appellant's house which was used as collateral for a loan of Tshs. 50,000,000/= from the CRDB Bank PLC.

Juma Hamisi Kizito lodged a dispute in the trial Tribunal seeking relief that he should be ordered to pay the outstanding loan balance until the variation period is over on 15/12/2019 and

that the Tribunal declare that the auction conducted by the respondents on 18/01/2019 is unlawful, and lastly issue a temporary injunction order restraining the respondents and their agents from interfering, disposing the house. The trial Tribunal decided the matter in favour of the respondents and ordered Juma Hamisi Kizito to repay the loan within 45 days.

Dissatisfied with the decision of the trial Tribunal, Juma Hamisi Kizito lodged this appeal on two grounds, namely:

1. That, the trial Tribunal grossly erred in law and fact by considering the auction was lawfully conducted.
2. That, the trial Tribunal erred in law and fact to order sale by auction by the respondents and disregarding any sale should be in accordance to the valuation report agreed by the parties.

The appeal was disposed of by way of written submission and both sides complied to the timeline set by the Court. Whereas Mr. Lucas Ndanga appeared for the appellant, Mr. Akram Magoti acted for the respondent.

Arguing in favour of the appeal, the appellant's advocate decided to depart from the grounds of appeal raised in the petition of appeal and preferred three issues to wit;

1. Whether it is proper to dispose a family house without consent.
2. Whether its proper to demand interest from a debtor twice in one loan.
3. Whether its proper to ignore a problem raised by the appellant if it is related to evidence of paying the loan.

The learned advocate submitted that the respondents surprised the appellant by changing the end date on repayment of

the loan from 15/12/2019 to 18/01/2019 making it ten months ahead of the repayment schedule, hence pre-empting the appellant on how to repay the loan which was not proper.

Mr. Ndanga averred that in regards to the second issue, the history is that the appellant obtained a loan of Tshs. 50,000,000/= with an agreement that it be repaid by 03/04/2016 and the appellant managed to repay Tshs. 55,892,687.64 but the 1st respondent still claims Tshs. 11,652,155.91 instead of Tshs. 2,394,208.91 as it stood.

In the last issue raised by the appellant, the learned advocate asserted that, when a client gets a problem, he/she reports it to the host bank. He said on the presence case, the appellant reported after losing spare parts of various machines worth of Tshs. 180,000,000/= which were geared to be used to settle the debt once sold but the bank did not take note of that happening.

Replying to the appellant's submission, Mr. Akram Magoti, advocate for the respondent, submitted that the issues framed by appellant in his submission were not featured in the original pleadings before the trial Tribunal.

He asserted that it is a trite position of the law that when the Court is invited to determine a certain issue, the same must have featured in the original proceedings before the trial Tribunal as parties are bound by their pleadings.

He further contended that the appellant's advocate departed from his petition of appeal which of course forms part of the pleadings in this appeal and framed new issues which were neither pleaded by the appellant in the trial Tribunal nor decided too.

Mr. Magoti cited the case of **HOOD TRANSPORT COMPANY LIMITED VS EAST AFRICA DEVELOPMENT BANK, CIVIL APPEAL NO. 262 OF 2019** (Unreported), where the CAT at page 14 and 18 held that;

“In principle, when the Court is invited to determine an issue, the same must have(sic) featured in the pleadings, hence the famous and well settled legal position that parties are bound by their pleadings whose proof is cemented by the evidence adduced.”
(Emphasis is added).

“We, more so, maintain the well-established practice that a decision of the court should be based on the issue framed by the court and agreed upon by the parties, and failure to do so could result in a miscarriage of justice”

The learned advocate for the respondent further submitted that the role of the Court on appeal is to determine issues that featured in the trial Court and not otherwise. He said the only issue that can be entertained on appeal for the first time is the issue of law.

He moved this Court to dismiss the appeal at hand allegedly because the appellant’s submission is based on issues that were neither pleaded nor determined by the trial Tribunal.

Having gone through submissions by both parties, and the records of the trial Tribunal, I concur with Mr. Magoti that the appellant did not argue the grounds of appeal outlined in the petition of appeal but rather framed new issues to be determined by this appellate Court. The new issues were neither pleaded nor entertained at the trial Court.

It is a settled principle of the law that parties are bound by their pleadings. In the case of **MAKORI WASSAGA VS JOSHUA MWAIKAMBO & ANOTHER [1987] TLR 88** where the Court held that;

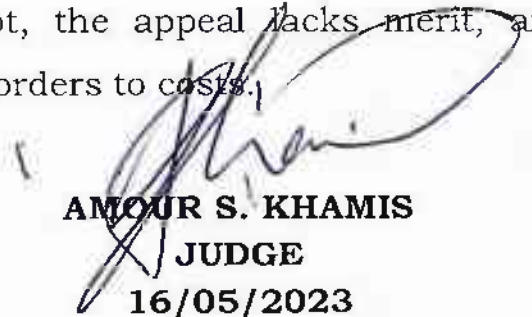
“A party is bound by his pleadings and can only succeed according to what he has averred in his plaint and proved in evidence; hence he is not allowed to set up a new case.”

The appellant was bound to address the Court on both factual and legal issues that featured in the trial tribunal or new issues of law with leave of the Court. This was well emphasised in the case of **REGISTERED TRUSTEES OF THE ARCHDIOCESE OF DAR ES SALAAM VS THE CHAIRMAN, BUNJU VILLAGE GOVERNMENT & 11 OTHERS, Civil Appeal No. 147 of 2006** (unreported), the Court held that;

“Submissions are not evidence. Submissions are generally meant to reflect the general features of a party’s case. They are elaborations or explanations on evidence already tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substituted for evidence.”

The appellant’s submissions are contrary to what was presented as grounds in the petition of appeal.

In the upshot, the appeal lacks merit, and is therefore dismissed with no orders to costs.


AMOUR S. KHAMIS
JUDGE
16/05/2023

ORDER: Judgment delivered in open Court in presence of Mr. Samwel Lucas Ndanga, advocate for the appellant and absence of the respondent. Right of appeal explained.



AMOUR S. KHAMIS

JUDGE

16/05/2023