

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA**

MISC. LAND CASE APPEAL NO. 29 OF 2022

(C/F Appeal No. 68 of 2022 District Land and Housing Tribunal of Arusha, Original Land Application No. 15 of 2021 Migungani Ward Tribunal)

RAYMOND ANDREA MAHA 1ST APPELLANT
MOHAMED NURU 2ND APPELLANT
ANNA MUSHI 3RD APPELLANT
KAPANDE KONCHELA 4TH APPELLANT

VERSUS

MOHAMED MWEMUS CHO TIKUNGU RESPONDENT

JUDGMENT

29th March & 12th May, 2023

TIGANGA, J.

This is a second appeal emanating from Migungani Ward Tribunal in Monduli District (hereinafter, the trial Tribunal) in Land Application No. 15 of 2021 in which the respondent herein filed a complaint against the appellants herein over his piece of land measuring 5 ½ acres located at Mto wa Mbu area along Arusha Karatu Road, within Migungani Ward in Monduli District (hereinafter, the suit property).

According to his evidence at the trial tribunal, the respondent claimed that he bought the suit property on 2003, built a house therein, and lived

there in peace until 2014 to 2016 when the appellants trespassed on the northern side of the suit property and started to develop their respective trespassed into portions by building houses while the complainant therein, was out of the country for health treatments. On their side, the appellants claimed disputed to have trespassed on the said suit land but they were allocated the same by the Barabara Village Government in 2009 as compensation after they were asked to vacate their previously owned land back in 2002 to pave the way for government development projects one of them being building Jangwani Nursery and Primary Schools.

According to the appellants, in the year 2021, the respondent through the village chairman approached them asking to transfer them to another area for he had got an investor who wanted to build a petrol station and would want the whole area including the appellants'. They wanted to be compensated Tshs. 9,000,000/= each, but the respondent wanted to compensate them for other pieces of land instead.

The trial tribunal's record shows that it was still under negotiations that, the respondent shows them the pieces of land which he wanted to reallocate first then, if satisfied, they decide whether or not to close the deal.

To their surprise, before the negotiation was concluded, they were summoned to the trial tribunal for this case.

After the dispute was heard, the trial tribunal arrived at the conclusion that the appellants never trespassed into the respondent's area because they were allocated the same with the Village Government and that, the respondent, if he wishes, should sue the village government instead. Aggrieved by the decision, the respondent appealed to the District Land and Housing Tribunal of Arusha (hereinafter, the DLHT) in Land Appeal No. 29 of 2022. The DLHT decided in his favour on the ground that, there was double allocation as the appellants as they were reallocated the suit land which had been owned by the respondent. Disgruntled with the decision, the appellants filed this appeal, advancing eight (8) grounds of appeal as follows;

1. That, the DLHT erred in law and facts in continuing to determine issues of ownership after sustaining the ground of appeal that, the trial tribunal lacked pecuniary jurisdiction.
2. That, the DLHT erred in law and fact in awarding costs to the respondent without justifiable cause while acting under bias.

3. That, the DHLT erred in law and fact in hearing and determining the matter referred to the District Land and Housing Tribunal for Monduli District.
4. That, the DHLT erred in law and fact in declaring the respondent herein as the owner of the disputed land without enough evidence.
5. That, the DHLT erred in law and fact in failing to consider the reply submission by the appellant in composing judgment hence acting on bias by considering the respondent's submission only.
6. That, the DHLT erred in law and fact in failing to consider the huge evidence on records that, the land was allocated to the appellants herein.
7. That, the DHLT erred in law and fact in issuing an order that, "Arani ya mgogoro itabaki kuwa mali ya mrufani".
8. That, the DHLT erred in law and fact in providing an erroneous decision

During the hearing of the appeal which was by way of written submissions, the applicants were jointly represented by Mr. Kennedy Mapima whereas the respondent was represented by Mr. Benitho Mandele, both learned Advocates.

Supporting the appeal, Mr. Mapima submitted on the first, fourth, and eighth grounds of appeal together that, the DLHT gave an order; "*Ardhi yenye mgogoro itabaki kuwa ni mali ya mrufani*" after concluding that the trial tribunal lacked pecuniary jurisdiction to determine the dispute between the parties. He argued that the effect of allowing the ground of appeal based on jurisdiction meant that, the proceeding becomes nullity hence, the DLHT chairman was supposed to nullify the trial tribunal's proceedings and quash the decision as expounded in the case of **Patrick Williams Magubo vs Lilian Peter Kitali**, Civil Appeal No. 41 of 2019, CAT at Mwanza (unreported).

Mr. Kennedy Mapima further submitted that the DLHT Chairman erred in determining the issue of ownership because lack of jurisdiction nullifies the trial tribunal's proceedings hence leaving the DLHT with no records to determine the issue of ownership. Apart from that, the DLHT also erred in agreeing with the assessors of the tribunal that, the respondent should remain as the legal owner of the suit property.

Regarding the fifth ground of appeal, Mr. Mapima submitted that, the DLHT chairman never considered the appellants' reply submission when reaching his decision but rather, he only considered the respondent's

arguments in submission. According to the learned counsel, that did not amount to a fair hearing as underscored in the case of **Mufindi Paper Mills Limited vs Ibatu Village Council & 3 Others**, Civil Revision No. 555/17 of 2019 that, right to be heard is the basic right that, both parties have to be afforded during the hearing.

As to the second ground of appeal, it was Mr. Mapima's submission that, the DLHT erred in awarding costs to the respondent after allowing the ground of pecuniary jurisdiction without asking itself who initiated the dispute at the trial tribunal. He argued that, although awarding costs is purely discretionary, the same must be exercised judiciously. That, it was not justifiable for the respondent to benefit costs from his own wrong. He prayed that, this appeal be allowed with cost.

Opposing the appeal, Mr. Mandele submitted that, the DLHT correctly exercised its powers on appeal by varying the trial tribunal's orders and made other orders as it deem fit as per section 35 (1) (b) of the **Land Dispute Courts Act**, Cap 216, R.E 2019. He argued that, the DLHT exercised its appellate jurisdiction which among other things determined the dispute between the parties to its finality by declaring the legal owner of the suit property. The learned counsel further submitted that, the DLHT considered

all the evidence on record before reaching its final decision. Since the DLHT did not uphold the trial tribunal's decision but set it aside, it did not err in making other orders as it thought fit for the purpose of determining the dispute to its finality.

Regarding the grounds relating to a fair hearing and awarding costs, it was Mt. Mandeles's submissions that, the DLHT considered evidence of both sides as well as submissions before making its final decision and awarding costs. This included granting of costs which was the discretion of the DLHT. He prayed for the appeal to be dismissed with costs.

Rejoining briefly, Mr. Mapima reiterated his earlier submission and insisted that, the DLHT erred in making other orders after declaring that, the trial tribunal lacked jurisdiction to entertain the dispute between the parties.

I have gone through the records, the appellant's grounds of appeal as well as parties' submissions and I now proceed to determine the grounds of appeal filed starting with the first, fourth, seventh, and eighth grounds of appeal which are centered on the issue of jurisdiction.

At the DLHT, among the respondent's grounds of appeal was the fact that, the trial tribunal lacked pecuniary jurisdiction to determine the dispute between the parties. This was due to the fact that, the suit property has

buildings, used for business purposes, located at the commercial center, along the Arusha-Karatu road hence a prime area. Thus under no circumstance could it be valued below Tshs. 3,000,000/=. Deciding on this issue, the DLHT had this to say in its judgment;

*"Kwa sababu ya kwanza ya Rufaa mleta Rufaa anadai Baraza la Kata Migungani halikuwa na uwezo (pecuniary jurisdiction) kifedha kusikiliza shauri linalozidi thamani ya Tshs. 3 milioni. Mrufani anadai eneo la mgogoro lina thamani kubwa kwani eneo linashikiliwa na warufaniwa ambao wanafanya biashara katika eneo hilo na linapatikana katika eneo la kibiashara la Mto wa Mbu - Monduli District, kwamba ni eneo lenye hadhi na thamani kubwa, kwa hoja hii nakubaliana na wakili wa mrufani kwamba eneo lina thamani kubwa kuliko mamlaka ya Baraza kusikiliza shauri, kwani kumbukumbu za Baraza la Kata zinaonyesha baadhi ya warufaniwa wameshajenga nyumba za kiuchumi katika eneo hilo, hivyo kimsingi ni Dhahiri eneo lina zaidi ya thamani ya Tshs. 3 Milioni. Ingawa hakuna **Valuation Report** taarifa ya uthamini iliyotolewa kuthibitisha hoja hii, lakini ieleweke kwamba eneo la mgogoro ni sehemu ambayo shughuli za utalii zinafanyika kwa kasi sana na ni pembezoni mwa barabara kuu iendayo Ngorongoro Conservation Part; hivyo hata kama ni mrufani ndiye aliyefungua shauri katika Baraza la Kata, ilikuwa ni jukumu la Baraza la Kata kujitathimini*

endapo walikuwa na mamlaka kifedha kushughulikia mgogoro huu.”

After this holding, however, the DLHT made the following orders at the end of its judgment;

"Kwa msingi huo nakubaliana na maoni ya wajumbe wa Baraza Mr. Abel Lekasio na Mrs. N. Chaula ambao wote wamemuona mrufani ana haki na eneo la mgogoro.

Mwisho Baraza limetoa Hukumu kwamba:

- 1. Rufaa imeshinda kwa gharama.*
- 2. Maamuzi yote ya Baraza la Kata na mwenendo wake vinatenguliwa kwa sababu nilizoainisha hapo juu.*
- 3. Ardhi ya mgogoro itabaki kuwa ni mali ya mrufani.*

Imeamriwa hivyo.

M. R. Makombe,

MWENYEKITI

29/06/2022”

It is a trite principle that, the issue of jurisdiction is so paramount that courts must be certain and assured of their jurisdictional position at the commencement of the trial. Because it is a creature of statutes, jurisdiction can neither be assumed nor clothed on the court by the parties consenting that they be heard. It has been held by the Court of Appeal in a number of its decisions including the case of **Fanuel Mantiri Ng'unda vs. Herman**

Mantiri Ng'unda & 20 Others. Civil Appeal No. 8 of 1995, and **Aloisi Hamsini Mchuwau & Another vs Ahamadi Hassan Liyamata**, Criminal Appeal No. 583 of 2019, CAT at Mtwara (both unreported).

In the appeal at hand, the respondent herein is the one who initially filed his complaint at the trial tribunal, later appealed before the DLHT claiming that the trial tribunal had no pecuniary jurisdiction and the DLHT chairman conceded with that fact on the grounds hereinabove quoted. After so finding, the best remedy was to nullify the trial Ward Tribunal's proceedings and quash its decision and orders. In that regard, the DLHT erred in giving orders on top of proceedings that it had already declared to be a nullity. Facing a similar scenario, the Court of Appeal of Tanzania in the case of **Patrick William Magubo** (supra) held thus;

"In the premises, we find that the proceedings before the trial court and the first appellate court were vitiated. As a result, we have no option other than to nullify the entire proceedings of the trial court and quash the judgment, and set aside the subsequent orders thereto. We also nullify the proceedings of the High Court and quash its respective judgment and subsequent orders as they stemmed from null proceedings. The respondent is at liberty to process her petition afresh in accordance with the law, if she so wishes."

In the circumstances, as rightly argued by the appellants' counsel, the DLHT erred in giving further orders after it conceded to the fact that, the trial tribunal indeed lacked pecuniary jurisdiction to determine the land dispute between the parties. Having found that, the trial tribunal had no jurisdiction, the DHLT ought to have nullified its proceedings quash the decision, and order the interested party to file the application in the tribunal or court with the competent jurisdiction. I hold so because, since the trial tribunal's proceedings were conducted on an erroneously assumed jurisdiction contrary to the law, it is as good as there was no record before the DLHT to determine the appeal. This is the position underscored in the case of **Yohana Musa Makubi & Anor vs The Republic**, Criminal Appeal No.556 of 2015 CAT at Mwanza (unreported) where the Court of Appeal held inter alia that;

*"... In view of the stated omission the trial proceedings of the High Court were indeed vitiated and are a nullity and neither did they constitute the record of the trial and the appeal before us. We are thus satisfied that before us **there are no material proceedings upon which the appeal could be determined...**". (Emphasis added)*

Having found that the DLHT erred in adjudicating the appeal on a null proceeding of the trial tribunal hence, leading to an erroneous decision, I find no need to discuss other grounds of appeal as these are enough to dispose of the appeal in its entirety.

I, therefore, proceed to nullify the entire proceedings of the Migungani Ward Tribunal and quash the decision and the subsequent orders thereto. I also nullify the proceedings of the District Land and Housing Tribunal of Arusha and quash its judgment and subsequent orders made thereof as they are birthed from null proceedings. The respondent is at liberty to file his complaint afresh in the court of a competent jurisdiction subject to laws of limitation. In the event, the appeal is allowed with cost.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 12th day of May, 2023



A handwritten signature in blue ink, appearing to read "J.C. Tiganga", is written over a horizontal line.

J.C. TIGANGA
JUDGE