

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA
MISC LAND APPEAL NO. 29 OF 2021

(Arising from judgment in District Land and Housing Tribunal for Mwanza at Mwanza Land Appeal No. 107 of 2018 dated 23.10.2020 original Igogo Ward Tribunal Land Case No. 19 of 2017)

TUMAINI J. KUBOJA APPELLANT

(Probate Administrator of the Late of Estate of Paskazia Charles Mbikilwa

VERSUS

AMINA MBIKILWARESPONDENT

JUDGMENT

29th May 2023

ITEMBA, J;

This is a second appeal originating from Igogo ward tribunal and the District Land and Housing Tribunal for Mwanza (DLHT). On 23/8/2017, before the Ward Tribunal, the respondent Amina Mbikilwa, had sued the appellant over a plot of land located TANESCO Mulungushi area at Igogo, within Mwanza herein the suit plot. The decision was issued in her favor. The appellant herein, Tumaini Kuboja was dissatisfied with the said decision and filed an appeal before the District Land and Housing Tribunal for Mwanza where the Ward tribunal's decision was upheld. Again, he made a second attempt through this appeal.

The background of this appeal is that; before the Ward Tribunal, the respondent Amina Mbikilwa, was complaining that the suit plot is a family property and that the appellant who had once married her sister, is unlawful possessing it. That, initially, her grandmother Asha Masinde owned the suit plot and the respondent and her sister named Paskazia Mbikilwa grew up therein. The appellant disputed the claims. He maintained that the suit property was a matrimonial property between himself and his deceased wife. He expounded that, since 1990 he was living with Paskazia Mbikilwa, now the deceased, who is also the respondent's sister. That, the two were husband and wife because they officially got married around 2002. That, the said Paskazia Mbikilwa inherited the suit plot from Asha Masinde her grandmother in 1991 and the appellant and his wife Paskazia developed the plot by building shops and a bar and in 2004 his wife Paskazia died. The appellant stated that in 2004 he initiated a probate cause where he was appointed an administrator of estate of his deceased wife.

As stated earlier, both lower Tribunals issued the decision in favor of the respondent. The appellant is now moving this court through an appeal with the following grounds:

1. *That the Appellate, District Land and Housing Tribunal Chairperson erred in Law and fact, when she held that the suit property (House) situated at Igogo Mulungushi Tanesco Area Mwanza City, still belonged to the late ASHA MASINDE had prior to her death, and through natural love and affection bequeathed it to her granddaughter the late PASKAZIA CHRLES MBIKILWA wife of Appellant.*
2. *That the Appellate District Land and Housing Tribunal Chairperson erred both in Law and in fact when she failed to take into consideration the unexhausted developments the Appellant and his deceased wife had made onto the suit plot of Land after the said property was bequeathed to Appellant's wife in 1991.*
3. *That the Appellate Tribunal Chairperson, erred in Law and in fact, to declare that the Appellant had no **Locus Stand** in this case, when the Appellant was lawfully appointed probate Administrator of the Estate of his deceased wife Paskazia Charles Mbikilwa the very person who was bequeathed the suit property (House) by the late Asha Masinde in 1991. **Copy of probate Appointment letter form IV appended hereto for ease of reference.***
4. *That the Appellate Tribunal Chairperson erred in Law to declare that the suit property (House) in question was still registered in the name of the late Asha Masinde whereas in fact, the said property (House) was transferred to the name of Paskazia Charles Mbikilwa even before Asha Masinde who had transferred it to her had died away.*

5. *That Land Rent and building property tax was being paid under the name of the transferee the late Paskazia Charles Mbikilwa Appellant's deceased wife.*

Copies of Land Rent and building property Tax Receipt Nos. 18721 dated 23 – 2 – 2007 for 2002 – 2003, No. 0000018386 dated 14 – 2 – 2012, No. 0028774 dated 2 – 5 – 2019 are appended hereto for ease of reference.

6. *That the Appellate Tribunal Chairperson erred in Law and fact not to award the Appellant the suit premises after she had quashed and set aside the trial Tribunal's Judgment.*

7. *That the Appellate Tribunal Chairman erred in Law and fact when she failed to record the evidence of Appellant properly.*

8. *That the Appellate Tribunal Chairman erred in Law and in fact, when she failed to take into consideration the fact that the suit premises were over and above TZS 3,000,000/= value, hence trial ward Tribunal had no pecuniary Jurisdiction to adjudicate upon it.*

At the hearing, both the appellant and the respondent were present. They were also represented by learned counsels, Mr. Baraka Dishon for the appellant and Ms. Celina Magoiga for the respondent. Arguing the 1st ground of appeal, Mr. Baraka submitted that the DLHT did not consider the fact that the deceased had granted her house to Paskazia Mbikiliwa, the

appellant's wife. That even the respondent had admitted the same before the Ward Tribunal. In the second ground he stated that, the DLHT erred in not considering that the house belonged to the deceased and that he should not collect rent thereof while himself and the deceased have done a big renovation. In the 3rd ground, he argued that the respondent has no *locus standi* because she is not an administrator of estate of Asha Masinde. The 4th and 5th grounds were argued jointly that the DLHT did not consider that the house was already registered in the name of Paskazia Mbikilwa and not Asha Masinde since 1990's even the tax documents reflect the same name.

He also stated in the 6th and 7th grounds that the DLHT went beyond its jurisdiction by trying to find who was the rightful owner. In the last ground he argued that the suit plot has two modern houses with a value which exceeds TZS 3,000,000/= therefore the dispute was beyond the jurisdiction of the Ward Tribunal.

In reply, Ms. Magoiga argued the 1st, 2nd, 3rd, 4th and 5th grounds jointly. She stated that the decision by the ward tribunal was justified because the appellant, when he was questioned by the assessor named Mzee Lubasa he stated that, he knew that the house belonged to Asha

Masinde because they used to pay tax through her name. She added that there was no probate cause filed in respect of the estate of Asha Masinde therefore, the appellant ought to have known that the suit plot belongs to Asha Masinde. The respondent's counsel also explained that the appellant did not produce any evidence to show transfer of ownership from Asha Masinde to Paskazia Mbikilwa or any decision of the said probate cause. She argued further that developing a plot does not entitle the developer any ownership. That the suit plot is owned by Charles Mbikilwa who testified as D2 and he quoted him stating that '*kwetu mkwelima hawezi kurithi ukweni kwani kiwanja kilikua changu*'. Replying to the 3rd ground She also agreed with the lower tribunals that the appellant had no *locus standi* to sue because he was not the owner of the suit plot. regarding the 6th and 7th grounds she stated that the appellant was not specific as to which evidence was not considered by the DLHT because all the evidence was considered. Lastly, in the 8th ground she was of the view that the Ward Tribunal had jurisdiction because there is no evidence of valuation report showing value of the suit plot.

At this stage the issue *whether the appeal* has merit. At the time of composing a judgment, I had noticed some troubling aspect which drives

caution of this court as to the legality of the decision of the lower tribunals basing on jurisdiction, which was also the last ground of appeal. I therefore thought to start determining the last ground of appeal.

I wanted to satisfy myself on *whether the ward tribunal has jurisdiction over the suit plot.*

On my part, having examined the records and considered the submissions made by the parties, I wish to make the enlightenments as follows; the appellant is stating that the ward tribunal had no jurisdiction because the suit plot has two modern houses with a value of more that TZS 3,000,000/=. The respondent's counsel argues that there is no evidence of a proper valuation which was done at the suit plot hence the ward tribunal had jurisdiction.

In order to satisfy myself with the issue of jurisdiction, I have keenly gone through the evidence of both ward and district tribunals. There is no witness who directly testified on the value of the suit plot. However, there is evidence that when Paskazia Mbilikiwa was inheriting it, there were two mud houses and the suit was developed by the appellant and his deceased wife into shops and a bar.

Having further, gone through the records, it appears that, after the respondent filed a complaint before the Igogo Ward Land Tribunal on 23/8/2017, both parties were partly heard. Sometimes in the middle of hearing, it was noted that the ward tribunal has no jurisdiction as the property in dispute had a value of TZS 45,000,000/= which is above TZS 3,000,000/=. Therefore, on **27th September 2017** the Secretary of the tribunal one Koross, K.N wrote a letter to the District Land Tribunal for Mwanza (DLHT), forwarding the case and asking the DLHT to re-hear the case. The said letter also hints that the respondent who is now the appellant, has been reluctant in appearing before the tribunal.

Contrary to what the ward tribunal has requested, in record, there is also an order by the DLHT chairman, one Masao, E dated 28/6/2018, returning the same case file to the Ward tribunal for preparation of judgment.

It also seems that the chair of DLHT was not aware of the letter by the ward tribunal transferring the matter to his tribunal due to lack of jurisdiction. As a result, the Ward tribunal issued a judgment on 10/10/2018 which was subject to appeal before the DLHT.

It appears that the ward tribunal noted that the value of the suit plot was exceeding TZS 3,000,000/= after the testimony from the respondent (now the appellant) that he demolished the mud houses and renovated them into shops and bar. Before the ward tribunal he stated as follows:

`kweli tulijenga maduka pale na nyumba zile za tope tukazivunja, baadaye mke wangu akaanza kuugua hatimaye akafariki, baada ya msiba wake mimi (mdaiwa) niliendelea kupaboresha mji ule nikaweka na bar'

Further, records in the cover of the Ward Tribunal file, also shows that the Tribunal moved to the *locus in quo* on 13/9/2017. Therefore, the chairman must have seen the type of development at the suit plot and realized that it must be more than TZS 3,000,0000/= which is beyond his jurisdiction. That is why on 27th September he issued the said letter to transfer the file to the DLHT.

As these were issues which I came across while composing this judgment, I invited the parties to address me specifically on the jurisdiction of Ward tribunal to entertain this matter. The appellant's counsel argued that the Ward Tribunal had no jurisdiction because the suit plot has a value which is above TZS 3,000,000/= and the suit plot is above that value. The

respondent's counsel was of the view that, the issue of value of the suit plot cannot be concluded because there was no proof of its value. Yet, both counsels stated that they were assigned these cases at advance stage hence they were not very constant with the records especially from the ward Tribunal.

Following this situation, under Order XXXIX Rule 27 of the Civil Procedure Code which allows further evidence to be taken at appeal stage, I ordered both parties to conduct valuation on cost sharing basis. This aimed to enable the court to have the proper value of the suit plot. A valuation done by the valuers from the Ministry of Lands, Housing and Human Settlement, dated May 2023, was issued, which shows among others, that the land value is TZS eleven million (11,000,000/=) the building value is TZS Fifty-Two million (52,000,000/=) and the total value of the suit plot is Tanzanian shillings Sixty-Five million. (TZS 65,000,000/=).

In terms of section 15 of the Land Dispute Courts Act, Cap 216, the pecuniary jurisdiction is limited to land or property valued at three million shillings. (TZS 3,000,000). Having explained above on what has transpired in the lower courts, and the established value of the suit plot being TZS

65,000,000/= the Ward Tribunal was right in the first place to transfer the matter to the DLHT because it had no jurisdiction.

It is settled law that, an issue on a point of law challenging the jurisdiction of the court can be raised at any stage, See **Shahida Abdul Hassanal Kassam Vs Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 (unreported). In this matter the Ward Tribunal vested itself with the jurisdiction which it did not possess, to hear and determine the suit which is the basis of this appeal.

Before I conclude, as it shall be noted, the ground of jurisdiction by itself would suffice to determine the matter, yet it is important for the parties to observe in case they wish to re institute the case in the proper forum, the parties in the ward tribunal were **Amina Mbikilwa v Tumaini Kuboja**, in their personal capacities while in the DLHT the appellant was **Tumaini as an administrator of Paskazia Charles Mbikilwa v Amina Mbikilwa**. The records are silent as to why at appeal level, suddenly, the parties were different. I think it was not proper to change the parties and the appellant to suddenly appear as an administrator of the deceased's wife while he was sued in his personal capacity.

Having determined that the Ward Tribunal had no jurisdiction to hear the suit which is the basis of this appeal, on the way forward, I nullify, quash and set aside the entire proceedings and judgments of both Ward and District tribunals as they are stemmed, from a nullity.

Parties are at liberty to re institute the matter at a tribunal with competent jurisdiction.

Due to the fact that the appeal was determined largely on court's efforts, I order no costs.

It is so ordered.

Right of appeal duly explained.

DATED at **MWANZA** this 29th day of May, 2023.




L. J. ITEMBA
JUDGE

Judgment delivered under my hand and seal of the court in the presence of the appellant and his counsel Mr. Baraka Dishon and Ms. G. Mnjari RMA and in the absence of the respondents.



L.J. ITEMBA
JUDGE
29.5.2023