

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 2 OF 2023

(Appeal from the judgment and decree of the District Land and Housing Tribunal for Babati in Land Application No. 72 of 2020)

GHAMEI HHEMAI.....APPELLANT

VERSUS

GIDAMANDARDA GILBA.....RESPONDENT

RULING

Date: 24/5/2023 & 1/6/2023

BARTHY, J.

Before the District Land and Housing Tribunal for Babati, (hereinafter referred to as the trial tribunal) the appellant had sued the respondent over a piece of land measuring about 6 acres situated at Ming'enyi village in Ngabati Gehandu ward (hereinafter referred as the suit land).

The appellant prayed before the trial court for several reliefs against the respondent including to be declared the lawful owner of the suit land.

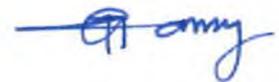


The trial tribunal after hearing the application it dismissed it and the respondent was declared the lawful owner of the suit land. The appellant was aggrieved with the decision of the trial tribunal. Thus, he preferred the instant appeal with six grounds of appeal which I will not reproduce them here.

This appeal was disposed of orally, however in the course of composing the judgment I found there was a pertinent issue that prompted this court to re-open the proceedings of this court and invite the parties to address the court on the propriety of preliminary objections raised before the trial that were not determined by the trial tribunal.

The appellant was represented by Mr. Raymond Kim learned advocate while the respondent fended for himself.

Addressing on those issues, Mr. Kim contended that the trial tribunal was justified to proceed with the hearing of the matter, as the respondent abandoned the preliminary objections raised. He submitted further that, the preliminary objections raised had no merits that is why the respondent abandoned them.



The learned advocate contended that the preliminary objections should have no merit as they revolve on the format of the application which was duly complied with. He further submitted that, once the preliminary objection is abandoned the party waives his right to have it determined.

He went on arguing that, the respondent was represented before the trial court and the preliminary objections were raised on his behalf, despite the fact that the respondent elected to proceed with hearing of the matter himself, but he waived his right to argue the preliminary objections.

On the other hand, the respondent on his submission he argued that he was represented by the advocate during the trial who raised the said preliminary objections. However, the respondent claimed to have not been aware of it because he did not raise them.

Having heard the arguments of both sides, the sole issue for my determination is whether the trial tribunal erred in determining the matter without disposing first the preliminary objections raised by the respondent.

It is on record that, on 24/6/2022 when the matter was called on for



hearing the respondent prayed for an order for amendment of his written statement of defence. The prayer which was granted which was granted by the trial tribunal.

The respondent duly complied with the said order and raised five preliminary objections as follows;

- i. That this application is incompetent for contravening regulation 3 (2) (a) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN 174 of 2003 and O. VII R. 3 of the Civil Procedure Act [CAP 33 R.E 2019] in respect of the description of the suit property in terms of its boundaries.*
- ii. That, this application is incompetent for contravening the principle enunciated in the case law precedent of JUMA B. KADALA VS LAURENT MNKANDE [1983] T.L. R. 103.*
- iii. That this application is incompetent for contravening Order VII Rule 1 of the Civil Procedure Act [CAP 33 R.E 2019]*
- iv. That, this application is incompetent for contravening Order VI, Rule 14 of the Civil Procedure Act [CAP 33 R.E*



2019]

v. That, this application is incompetent for contravening Order VI, Rule 15 of the Civil Procedure Act [CAP 33 R.E 2019]

Despite the preliminary objections being raised, the trial tribunal proceeded with hearing of the matter on merits. On the arguments of Mr. Kim, he contended that, the respondent decided to abandon the said preliminary objections. Whereas, the respondent on his side he claimed he was not aware his advocate who had prior represented him had raised those preliminary objections.

In respect of those arguments, I beg to disagree with the learned advocate Mr. Kim because the record does not indicate that the respondent had decided to abandon the preliminary objections raised.

On the other hand, Mr. Kim contended that the preliminary objections raised were baseless, as the appellant had complied with all requirements in filing the matter. These arguments cannot be correct as it was for the trial tribunal to determine so before it proceeded with the hearing of the matter.



This requirement has been underscored in numerous cases. To mention but few, in the cases of **Thabit Ramadhan Maziku and Kisuku Salum Kaptula v. Amina Khamis Tyela and Mrajis wa Nyaraka Zanzibar**, Civil Appeal No. 98 of 2011, **The Bank of Tanzania Ltd v. Devram P. Valambhia**, Civil Application No. 15 of 2002, **Khaji Abubakar Athumani v. Daud Lyakugile t/a DC Aluminium and Mwanza City Council**, Civil Appeal No. 86 of 2018, **Modest Joseph Temba v. Bakari Selemani Simba and two others**, Civil Revision No. 223/17 of 2019 and **Deonesia Onesmo Muyoga & 4 others v. Emmanuel Jumanne Luhahula**, Civil Appeal No. 219 Of 2020 (all unreported). In the latter case the Court of Appeal held that;

It is settled law that, once a preliminary objection is raised, it must be determined first before the substantive case is heard and determined. This is pertinent because the whole purpose of a preliminary objection is to make the court consider the first stage much earlier, save the time of the court and the parties by not going into the merits of the case because there is a point



of law that would dispose of the matter summarily.

[Emphasis is supplied].

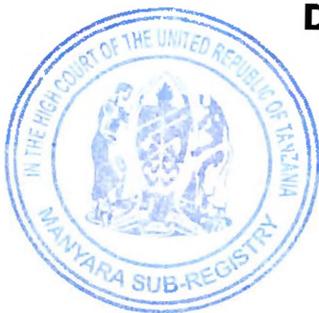
Basing on the above, it was fatal for trial tribunal to proceed with the determination of the matter without first determining the preliminary objections.

As to way forward I proceed to quash and set aside the proceedings subsequent to 6/7/2022 and the decision thereon, the record is remitted to the trial tribunal for determination of the preliminary objections raised, before any further step is taken. Owing to the fact that this case has been before the trial tribunal since 2020, I order the matter to be expedited.

The omission leading to the nullification of the proceedings to extent shown above was pointed out by this court *Suo motu*. I will therefore not make order as to costs.

It is so ordered.

Dated at Babati this 1st of June 2023.



G. N. BARTHY,

JUDGE

Delivered in the presence of the appellant in person and Mr. Raymond Kim his
advocate and the respondent in person.

A handwritten signature in blue ink, appearing to read "Raymond Kim", is located to the right of the text block.