

**IN THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**LAND APPEAL NO. 140 OF 2022**

*(Arising from District Land and Housing Tribunal of Ulanga, at Mahenge on Misc.  
Land Application no. 25 of 2022)*

**HABIBA KINJENGALILE ..... APPELLANT**

**VERSUS**

**TUMAINI NNKO ..... RESPONDENT**

**JUDGEMENT**

Date of last Order: 2/5/2023

Date of judgement: 19/5/2023

**MALATA, J**

The genesis of this application is the ruling given in the Application for execution No. 25 of 2022, by the District Land and Housing Tribunal (here in to be referred as DLHT) for Ulanga at Mahenge which allowed the respondent to execute the decree against the applicant entered in the Land Case No. 33 of 2020 by the Milola Ward Tribunal.

The appellant being aggrieved by the order of the DLHT appealed to this court based on the following grounds;

1. That, the District Land and Housing Tribunal for Ulanga at Mahenge erred in Law for failure to act suo motto against the impugned decision of the trial tribunal.
2. That the District Land and Housing Tribunal for Ulanga at Mahenge erred in law and in fact for failure to recognise and appreciate The Written Laws Miscellaneous Amendment (no. 3) Act, 2021.

The appellant prayed for this court to quash the decision of lower courts and order the case to start a fresh.

The background that gave rise to this appeal is as follows, at the Milola Ward Tribunal the respondent was the applicant and he claimed for twelve (12) acres of land allegedly to have been trespassed by the appellant. The Ward Tribunal entertained the dispute and on 1<sup>st</sup> November 2021 delivered decision by declaring the applicant the lawful owner of the suit land. Further, the Milola Ward Tribunal prohibited the respondent from dealing with the suit land.

On 28<sup>th</sup> February 2022 the applicant filed to the DLHT application for execution of orders of the Milola Ward Tribunal. The DLHT ordered the

execution against the appellant, hence this appeal. Aggrieved thereof, the appellant came to this court.

When this appeal came for hearing both parties were present, the appellant appeared in person unrepresented while the respondent was represented by Mr. Bageni Elijah, learned advocate.

Submitting in support of the appeal the appellant stated that, the Milola Ward Tribunal which entertained the land dispute and decide the same on 1/11/2021 had no jurisdiction as it ceased with effect from October 2021 following Written Laws Miscellaneous Amendment Act no. 3 of 2021 which took away the adjudication role of ward tribunal.

As such, she submitted that, the Ward Tribunal had no jurisdiction to entertain the matter as it had remained with mediation role only. She Finally, she submitted that, the DLHT ought to have raised it suo motto and find that there was no valid decision/order capable of being executed as the purported decision was not a decision legally recognised in law. She thus pressed for appeal to be allowed with costs.

Mr. Bageni Elijah, first stated that this appeal is misconceived as the matter before the DLHT for Ulanga was the execution proceedings and not an appeal. He further stated that the DLHT had never entertained any appeal by the appellant herein against the decision of the Ward

Tribunal dated 1/11/2021. He submitted that the executing court can't step into the shoes of an appellate or revisional court, the ruling of DLHT speaks for itself and can't be reversed by way of through execution proceedings.

It was submitted further that, as the dispute was received by the ward tribunal on 23/11/2020 when the Ward Tribunal had jurisdiction then it was vested with mandate to hear and determine the matter for that reason.

Mr. Bageni, finally, prayed for dismissal of the appeal with costs

By way of rejoinder, the appellant had nothing to re-join but reiterated what she submitted in chief.

Having gone through the submission from both sides and records, I am certain that, it undisputed that, **one**, upon delivery of the decision by the Milola Ward Tribunal on 1<sup>st</sup> November, 2021 in land dispute no.33 of 2021 there was no appeal preferred by the Appellant herein, **two**, the respondent herein applied for execution of the Milola Ward Tribunal in DLHT for Ulanga, **three**, the appellant herein challenged the application for execution raising issues of jurisdiction that the trial ward tribunal had no jurisdiction entertain the matter following the Written Laws Miscellaneous Amendment (no. 3) Act, 2021 which removed the

adjudication role of the Ward Tribunals, **four**, the DLHT delivered decision in an application for execution no. 15 of 2022 ignored the same for the reason that, it was to be raised in an appeal but not in an application for execution, as such it was accommodated, **five**, aggrieved thereof, the appellant came to this court raising among others, the same issue of jurisdiction of the Ward Tribunal to entertain land dispute No. 33/2021.

To start with, before amendment of section 13 of the Land Disputes Court Act, Cap. 216 R. E. 2019 reads that;

*13. General jurisdiction*

*(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunal Act, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.*

*(2) Without prejudice to the generality of subsection (1), **the Tribunal shall have jurisdiction to enquire into and determine disputes** arising under the Land Act and the Village Land Act. [Cap. 113; Cap. 114]"*

Section 13(2) of the Land Disputes Courts Act was amended by the Written Laws (Miscellaneous Amendments) Act, No.3 of 2021 which was published in the Gazette of the United Republic of Tanzania **No. 102, Vol. 41 dated on 11October, 2021** and reads that;

*"45. The principal Act is amended in section 13 by- (a) deleting subsection (2)".*

After amendment of section 13 (2) of the Act by deleted subsection (2) herein, the Ward Tribunal **ceased to jurisdiction to inquire into and determine disputes arising under the Land Act and the Village Land Act with effect from the date of publication stated herein above.** In the circumstances, section 14 of the Interpretation of the Laws Act [Cap. 1 R.E 2019] gives a guidance as follows;

*"14. Every Act shall come into operation on the date of Its publication in the Gazette or, if it is provided either in that Act or in any other written law, that it shall come into operation on some other date, on that date". [Emphasize added]*

Based on the above status. Ward Tribunals ceased to have jurisdiction to inquire into and determine disputes arising from the Land Act and the Village Land Act with **effect from 11<sup>th</sup> October, 2021** following the

publication of the said amendment. The records show that the trial tribunal inquired and heard land dispute between the parties herein and delivered its decision on 1<sup>st</sup> November, 2021 being almost one month after coming into operation of the said amendment on 11<sup>th</sup> October, 2021.

Having read the said amendment, it is clear that, the amendment deleted Ward Tribunals in Mainland Tanzania with jurisdiction to hear and determine land disputes with effect from 11<sup>th</sup> October, 2021 save mediation jurisdictions over land disputes.

With the commencement of the amendment of the Land Disputes Courts Act on 11<sup>th</sup> October, 2021 all ward tribunals ceased to have jurisdiction to hear and determine land matters save for mediation jurisdiction. The law transferred the adjudication mandates to the District Land and Housing Tribunal. Since jurisdiction is a constitutional or statutory creature and that there is no provision from any law exempting the pending dispute in Ward Tribunal to proceed in any way following the commencement of the amendment with effect from 11<sup>th</sup> October, 2021, we have no way to entrust and decide that the ward tribunal continued to have jurisdiction over such matter post 11<sup>th</sup> October, 2021. Consequently, I hold that, the Ward tribunal had no jurisdiction to

inquire and determine the land disputes no.33 of 2021. Therefore, the decision of Milola Ward Tribunal is a nullity.

This appeal arose from execution application no. 25 of 2022 seeking to enforce the award by the Milola Ward Tribunal in land dispute no. 33 of 2021 which as stated above was a nullity. The issue of was raised before DLHT but was not accommodated for reasons that, it was to be raised in an appeal and not otherwise thus misplaced.

On the proceedings of 13/07/2022 before R.W. Mmbando, Chairman the proceedings were as follows;

*HOJA ZA MWENYE TUZO*

*Maombi ni kuomba kukabidhiwa eneo langu kutoka kwenye hukumu ya Baraza la Kata Milola Mgogoro wa ardhi namba 33/2021. Maombi yangu ya kuachiwa eneo langu.*

*Signed*

*13/07/2022*

*HOJA ZA MSHINDWA HUKUMU*

*Napinga madai yake kwa sababu **hukumu ilitoka wakati mabaraza ya kata yameshafunga yasisikilize kesi wala kuhukumu.***



This court bears a different view in the sense that, despite being raised in the execution proceedings and bearing in mind, it had the effect making the execution proceedings a nullity, if the point of law raised was tenable, then the DLHT ought to have entertained it by stepping into the shoes of its power of revision to ascertain its **correctness, legality, propriety** of the Ward tribunal following the raised issue. The DLHT has powers, authority and jurisdiction to call for and examine the record of any proceedings before Ward tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings of the Ward tribunal.

The DLHT could have invoked powers under section 36 (1) of Land Disputes Court Act, which depict that;

*36.-(1) A District Land and Housing Tribunal **may call for and examine the record of any proceedings of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has-***

*(a) **not contravened any Act of Parliament, or subsidiary legislation; or***

*(b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, and may revise any such proceedings.*

The powers under section 36 here in above are supervisory in nature which can be invoked upon application by either party or suo motto be done by tribunal itself even in the absence of such application for execution. Otherwise, there is no need to have high authority like DLHT clothed with supervisory role but get worried to exercise it even when such vital legal issue has been raised which have the effect of turning even the proceeding before it a nullity.

Section 36 does not strip off the District Tribunal revisional jurisdiction in execution proceedings nor does it impose mandatory requirement to invoke such revisional powers when there is only appeal or revision application. The point of law raised had the effect of informing the DLHT that it was acting on a nullity.

Further, the Land Disputes (the District Land and Housing Tribunal) Regulation, 2003, GN No. 174 of 2003 under Regulation 23(5) provides for what is to be done by the chairman where there is objection on the execution from the judgement debtor by stating that;

*"The chairman shall, where there are objections from the judgement debtor consider the objection and make such orders as may be appropriate."*

The above regulation does not provide what kind of objections can be raised in execution hearing and the modality of raising such objection; however, such lacuna is filled by the Civil Procedure Code, Cap 33 R.E 2019 (CPC) as per section 38(2) which provides that any objection like limitation and jurisdiction can be raised.

The executing Tribunal in the case at hand ought to have listened to the parties on the objection raised by the appellant at the DLHT. Afterward it could have been in a position to make the orders as it deem right based on the submission of the parties. Failure of DLHT to exercise such mandate prejudiced the appellant as the matter which was raised touches the jurisdiction of the trial tribunal which heard and determine the matter which it has no jurisdiction.

It is an elementary legal knowledge that, courts must exercise jurisdiction provided for by statute. The Court of Appeal in **Fanuel Mantiri Ng'unda V. Herman M. Ng'unda & Others** [1995] TLR 155(CAT) held that:

*"The question of jurisdiction of any Court is basic, it goes to the very root of the Court to adjudicate upon cases of different nature. **The question of jurisdiction is so fundamental that courts must as matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.***

*It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case...." (at p.159).*

In the case of **Richard Julius Rukambura Vs. Isaack Mwakajila and Another** Civil Appeal No. 3 of 2004, the court held:

*"The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, even at the appeal stage. The court, suo motu can raise it and decide the case on the ground of jurisdiction without hearing the parties".*

Based on the error pointed above, it is evident that the proceedings and decision of the Ward Tribunal were a nullity as it entertained it without jurisdiction. The proceedings and decision of the executing tribunal therefore are nullity as it originated from a nullity.

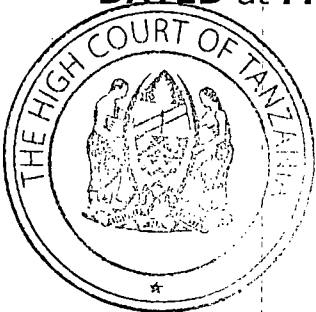
During submission both parties were not in variance on the point that, **one**, the Ward Tribunal delivered decision of land dispute no.33 of 2021 on 1<sup>st</sup> November, 2021, **two**, that by virtue of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2021 published in the Gazette of the United Republic of Tanzania **No. 102, Vol. 41 dated on 11October, 2021** made cessation of the Ward Tribunal's mandate to adjudicate land disputes with effect from 11<sup>th</sup> October,2021, **three**, the Ward tribunal delivered decision on 1<sup>st</sup> November,2021 which is beyond the **11<sup>th</sup> October, 2021** the date of cessation.

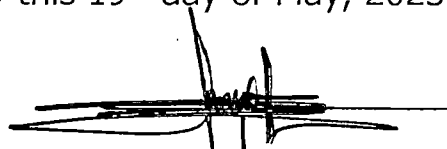
This court, therefore, in the exercise of powers under section 43 of the Land Disputes Courts Act, Cap.216 R.E.2019 hereby revise and nullify the proceedings and decision of the two lower Tribunals for want of jurisdiction. Should any party interested to pursue for the matter he/she may commence a fresh proceeding.

Owing to the circumstances of the matter, I make no order as to costs.

**IT IS SO ORDERED.**

**DATED** at **MOROGORO** this 19<sup>th</sup> day of May, 2023.



  
G. P. MALATA  
JUDGE  
19/05/2023