

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

LAND APPEAL NO. 3 OF 2023

(Arising from Misc. Land Application No. 227/311 of 2021 of Kigoma District Land and Housing Tribunal, Originated from Buzebazeba Ward Tribunal in Land Application No. 7 of 2017).

HUSSEIN ALLY KAMFUNGE (Administrator of the estate of
the late Masuma Soud Mlombo) **APPLICANT**

VERSUS

AMRI MBARUKU **1ST RESPONDENT**

SEIF AHMAD SOUD **2ND RESPONDENT**

JUDGMENT

20/4/2023 & 25/5/2023

Mlacha, J.

This is a judgement in respect of an appeal lodged to this court against the decision of the District Land and Housing Tribunal for Kigoma (the DLHT) made in Miscellaneous Land Application No. 227/311 of 2021, Original Land Dispute No. 7 of 2017 of Buzebazeba Ward Tribunal Kigoma Ujiji Municipal. The appellant is Hussein Ally Kamfunge (the administrator of the estate of the late Masuma Soud Mlombo). The respondents are Amri Mbaruku and

Seifu Ahmad Soud (hereinafter referred to as the first and second respondents respectively).

The records show that, the first respondent filed the case at Buzebazeba ward tribunal against the second respondent. He was claiming ownership of plot No. 21, Block B, beach plot, Burega area, Kigoma Municipal. The tribunal found for the first respondent. The judgment was delivered on 7/4/2017 giving victory to the first respondent. The second respondent did not opt to appeal. He made an agreement with the first respondent and paid him Tshs 15,000,000/= as compensation. The matter as between the respondents ended there.

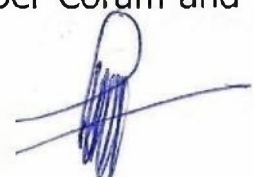
The records show further that, while the case was at the ward tribunal the appellant appeared in his personal name of HUSSEIN ALLY KAMFUNGE and said that he had no interest in the land. He left to the primary court to process letters of administration. The tribunal could not wait for him. It heard the respondents and made its decision declaring the first respondent to be the owner of the land. The appellant obtained letters of administration of the estate of his late grandfather, the late Masuma Soud Mlombo and came back. He found everything finalized as aforesaid. He moved to the DLHT to find a way to revise the proceedings. He filed an application seeking



extension of time within which to lodge the revision. It was dismissed. He moved to this court on two occasions and succeeded to get orders for extending the time.

Armed with letters of administration and orders for extension of time from this court, the appellant approached the DLHT and filed an application for revision against the decision of the ward tribunal. The revision was dismissed hence the appeal now before the court.

The appeal now before the court has 11 grounds of appeal, but reading through, I think that they can be reduced to six grounds. **One**, that the DLHT erred in Law and fact in failing to see that the appellant was not a party, not heard but the decision which was passed affected his rights; **two**. that, the DLHT erred in fact in failing to know that the appellant and the whole family of Masuma Soud Mlombo lives in the suit land; **three**, that the DLHT erred in law and in fact in deciding the case against the decisions of this court made Land Appeal No. 17/2020 (Matuma J) and Land Appeal No. 40/2021 (Mlacha J) in the same matter; **four**, that, the DLHT erred in law and fact in failing to know that the ward tribunal had no pecuniary jurisdiction to try the case; **five**, that, the chairman of the DLHT erred in law and fact in failing to know that the ward tribunal decided the case without a proper Coram and



six, that, the DLHT erred in finding that Hussein Ally Kamfunge was claiming the land in his personal name while in reality he stands as the administrator of the estate of the late Masuma Soud Mlombo.

Hearing was done by written submissions and parties could file their submissions in time. It was the submission of the appellant that the DLHT erred in failing to know that the appellant was condemned unheard in the case which involve the land where he and the entire family of the late Masuma Soud Mlombo lives. He referred the court to part of the decision of this court made in Land Appeal No. 40/2021 and 40/2020 where it is written that the appellant was not a party at the ward tribunal but the order which was made subsequent thereto affected him. He argued that the DLHT was supposed to respect the findings on this court and revise the proceedings of the ward tribunal.

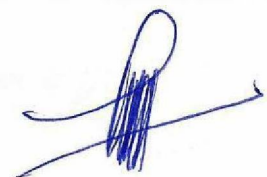
It was submitted further that, the ward tribunal had no pecuniary jurisdiction to try the case based on the fact that the first respondent was paid Tshs. 15,000,000/= by the second respondent as compensation for the land meaning that the land, the subject matter of the case, was over 3,000,000/= which was maximum jurisdiction of the ward tribunal. He referred the court to section 15 of the Land Disputes Courts Act, Cap 216 R.E. 2019 on the



pecuniary jurisdiction of the ward tribunal. He argued that the ward tribunal acted without jurisdiction making the proceedings and decision illegal.

It was the submission of Mr. Kagashe for the respondents that, the DLHT having regard to the records and what had transpired at the ward tribunal, properly held that the appellant was not a party in Land dispute No. 7/2017 because his appointment was made in June 2017 while the case was decided in April/2017. He went on to say that the appellant could not be heard as an administrator because he was not an administrator at that time and had no locus standi in his personal name. He went on to say that his status as an administrator came after the case had ended at the ward tribunal. He added that he had personal knowledge of the dispute but appeared at the ward tribunal (in his personal name) and denied to have an interest in the matter. Neither did he disclose his grandfather's interest in the matter at the time.

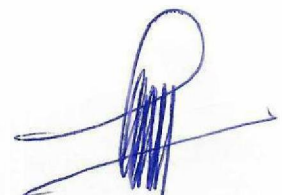
Counsel proceeded to submit that the allegation that the family of the late Mzee Masuma who passed away in 1969 lives in the area were unsubstantiated because the land being a beach plot was merely a farmland and not residential as alleged. He added that there was nothing in the area when it was surveyed and demarcated in 2012. Likewise, counsel submitted,



when the ward tribunal visited the locus in quo, it did not find the alleged residences leaving the appellant's claim on the land utopian.

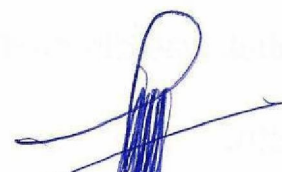
Submitting on the jurisdiction of the ward tribunal, counsel submitted that Tshs 15,000,000/= paid to the first respondent by the second respondent as compensation has no relevance in jurisdiction of the ward tribunal because the issue between the parties was not the amount of compensation but who is the lawful owner of the land. He added that this amount is not reflected anywhere in the proceedings of the ward tribunal but was just agreed by the parties after the case had ended. Submitting on the coram of the ward tribunal, counsel submitted that six members attended which was over and above what is required by section 11 of the Land Disputes Act which has a minimum of 4 members and a maximum of 8 members.

Submitting on decisions of this court made in Land Appeal No. 17/2020 and Miscellaneous Land Appeal No. 40/2021, counsel said that directions made in the cases were complied with. The court extended the time within which to lodge the revision which was complied with. He went on to submit that the direction to receive and hear the revision was complied with. He said that the parties were heard, assessors gave opinion and the decision was



made. Based on what he submitted, counsel argued the court to dismiss the appeal.

I will discuss all the grounds of appeal together. Reading through the records of the lower courts and submissions, it is not disputed that the appellant appeared at the ward tribunal in his personal name of Hussein Ally Kamfunge. Being informed of what was happening, he moved to the primary court to obtain letters of administration to challenge the case. Back in his absence, the ward tribunal heard the respondents and made its decision in favour of the first respondent. The respondents did not want the matter to go far. They reached a settlement for payment of Tshs 15,000,000/= to the first respondent who agreed to leave the land to the second respondent. When the appellant was appointed the administrator in June 2017, he found that everything had been concluded between the respondents in April 2017. There was nothing pending at the ward tribunal. On some legal advice he moved to the DLHT to file the application for extension of time within which to file the revision which was dismissed. He then proceeded to this court in the two appeals. This court extended the time. It also observed that the appellant was not a party at the ward tribunal. This was the reason as to why extension of time was granted.



Looking at what had happened at the ward tribunal and later before this court, I think that the DLHT ought to have given the appellant a right to be heard through the revision, See **Danny Shasha v. Samson Masoro & 11 Others**, (CAT) Civil Appeal No. 298 of 2020 and **Mussa Chande Jape v. Moza Mohammed Salim**, (CAT), Civil Appeal No. 141 of 2018. With respect to Mr. Kagashe, I don't think that the fact that the appellant had appeared earlier at the ward tribunal and said that he had no personal interest in the matter, can deny him access to the court after obtaining his new status as administrator of the estate. He had no locus to do anything at that time so he could not have anything to do. But this does not mean that he could not sue after obtaining locus standi. He had no locus but when he gained the locus he could sue subject to the law of limitation. The issue now is whether observations of this court made in this area ought to have been followed by the DLHT. I think that what was decided in this court was the issue of extension of time. All other things were mere observation of the court which include what was raised by the appellant. They were mere obiter which did not bind the DLHT. Further, as correctly observed by Mr. Kagashe, what was directed by this court was filing the revision which was complied with.



What about the pecuniary jurisdiction of the ward tribunal and the allegation that the entire family of the appellant live there and is now denied of their home?. I saw a gap in the records. I could not get clear answers from the records and submissions on these questions. I felt of being mislead. It was a situation of calling for additional evidence but that could be done without further delay of this 2017 matter and expense. It was a situation calling for the inherent powers of court contained under section 95 of The Civil Procedure Code Act. Section 95 reads

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

Section 95 has the saving powers of the court. The court has powers under this section to make orders as may be necessary, for the ends of justice or to prevent an abuse of the court process. This was a situation calling for the issue orders to ensure that justice is done without further delay and additional expense to the parties. So, it was ordered and the court should move with the parties and their counsel to the suit premises. Acting under section 95 of the Civil Procedure Code Act. I ordered the parties to take me



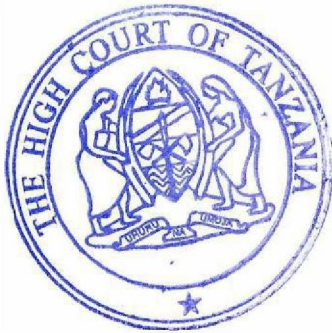
to the suit premises instantly (for it was not very far) to show me what they had said.

Having reached there, it was found that there was a misleading to the court. We could not find any residential house or people living in the area as alleged by the appellant. The suit land was found to be a huge beach plot which could not be said by any standards, to fetch a price below 3,000,000/= showing that this fact was hidden to mislead the court. The land attracted a higher price. I think that is the reason as to why the second respondent could readily release his Tshs. 15,000,000/= in settlement of the case. If the DLHT had taken trouble to think of what was paid and the location of the plot, without even going there, it could find that the ward tribunal had no jurisdiction to try the case because the value of the suit land was over and above 3,000,000/=.

Finally there is the question of the coram of the ward tribunal. I agree with Mr. Kagashe that six members who were present were over and above the minimum coram of four members which were needed making the proceedings in line with the law. This ground of complain is therefore baseless and dismissed.



Based on my findings on grounds one and four, the proceedings and decisions of the lower tribunals are revised, vacated and set aside. It is directed that any interested person should file a fresh matter before a court of competent jurisdiction. It is ordered so. The appeal is allowed with costs.

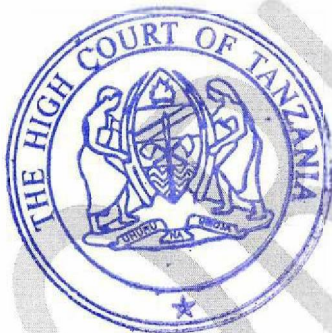



L.M. Mlacha

Judge

31/5/2023

Court: Judgment delivered. Right of Appeal Explained.




L.M. Mlacha

Judge

31/5/2023