

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CIVIL APPEAL NO. 15 OF 2021**

*(C/f Civil Case No.4 of 2004 District Court of Hai at Hai)*

**HEAVENLIGHT KILEO ..... APPELLANT**

**VERSUS**

**NEEMA LEMA ..... 1<sup>ST</sup> RESPONDENT**

**GOODLUCK LYATUU..... 2<sup>ND</sup> RESPONDENT**

*Last Order: 08/11/2022*

*Judgment: 11/1/2023*

**JUDGMENT**

**MASABO, J.:-**

This is a first appeal. It is challenging a decision of the Districts Court of Hai at Hai (the trial court) in Civil Case No. 11 of 2004. The appellant who was the plaintiff in the said suit claimed from the respondents specific damages at a tune of Tshs 40,905,000/= and general damages suffered after the respondents demolished her and deprived her the use of the properties therein. She averred that, in 1985 she constructed a seven room house in a parcel of land allocated to her by her father. Having constructed the house, she moved in and lived peacefully until on 7/11/2003 when the respondents unlawfully demolished it. Upon the suit being instituted and the service of the plaint effected to the defendants who are the respondents herein, they file a notice of preliminary objections premised on the following two limbs;

1. That, the suit was incompetent for being *res judicata*.

2. That, the trial court had no jurisdiction as the matter was purely a land dispute.

After hearing of the both parties, the trial court sustained the second preliminary objection and struck out the suit after it established that it was not clothed with jurisdiction to entertain the suit as it involved a land dispute. Hence, within the exclusive jurisdiction of the land courts. Disgruntled, the appellant has moved this court by way of an appeal premised on the following three grounds;

1. That, the trial magistrate erred in law and in fact in failing to differentiate the appellant's claim from civil to land or criminal case;
2. That, the trial magistrate erred in law and in fact in deciding that the court had no jurisdiction on this matter while the appellant had a clear cause of action against the respondent.
3. That, the trial magistrate erred in law and in fact in failing to consider the order given by the higher court.

During hearing of the appeal, the appellant appeared in person unrepresented whereas the respondent was represented by Mr. Elias Kiwia, learned counsel. Supporting the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal, the appellant submitted that, the trial court erred in holding that it had no jurisdiction as her claims were not of ownership but for compensation in respect of her demolished house and deprivation of the assets found in the said house. She claimed that after the 2<sup>nd</sup> respondent evicted him and demolished the house, she objected by reporting to the instance to her uncle. She was thereafter

advised by the Ward Executive Officer and the Deputy Registrar of this court to sue for compensation of the house and assets hence the suit in the District Court of Hai. On the 3<sup>rd</sup> ground, she briefly submitted that the appeal should be allowed as the respondents have ignored the decision rendered by this court, Mutungi, J.

In rebuttal, Mr. Kiwia submitted on the 1<sup>st</sup> and 2<sup>nd</sup> grounds jointly that the appeal is baseless as the suit from which it emanates was purely a land matter. He proceeded that as per the plaint, the appellant's claims emanated from an eviction and demolition of her house at Siha hence, a land dispute and should be entertained by land courts which are enjoined with exclusive jurisdiction over land matters. Filing of the suit in an ordinary court was a misguidance on part of the appellant as ordinary courts have no jurisdiction to entertain land matters. He added that, even if it is assumed, just for the sake of argument, that the matter was a normal suit and the court had jurisdiction, the suit would still fail as the demolished house was located at Siha District and not Hai District where she instituted the suit.

To cement his argument, he cited the case of **Backlays Bank (T) Ltd Vs. Jacob Muro**, Civil Appeal No. 357 of 2019 where the Court of Appeal of Tanzania emphasized that, parties are bound by their pleadings. Thus, the relevant facts for consideration were the ones raised in the plaint and not otherwise. In addition, he submitted that the suit was barred by time as the course of action accrued on 16/11/2016. Counting from this time to the time

of institution of this matter in court, it is vivid that the time within which to sue in a civil suit had lapsed.

On the 3<sup>rd</sup> ground Mr. Kiwia submitted that it is misguided as the decision by Mutungi, J. was implemented. The case file was remitted back for hearing and determination of the preliminary objection as ordered. He further submitted that there is a primary court's decision of 2003 by which the appellant was ordered to vacate the suit land because the same had been sold by her father to the 2<sup>nd</sup> Respondent who was ordered to take possession. It is the execution of this order which was done with the assistance of and he did so under the assistance of the 1<sup>st</sup> Respondent who was then a Ward leader. He submitted further that, since the decision of the primary court declared the appellant a trespasser, his continued occupation of the suit land was a contempt to a lawful order of the court and continued trespass. was tantamount to trespass. Thus, the respondent has no any right for compensation in respect of the eviction as held in **Lawrence Magesa Vs. Fatuma Omary and another** Civil Appeal No. 333 of 2019. In the foregoing, it was argued that, the appellant has no right to be compensated for the costs incurred in the prosecution of the suit at the trial court and this appeal. In conclusion, he prayed that the appeal be dismissed and expressed the defendant/respondent's prayer for waiver of the prayer for costs should they emerge successful as the appellant is indigent.

In her rejoinder, the appellant maintained that she is not a trespasser as she was given the suit land by her father. As to why she did not file the claim in

the District Land and Housing Tribunal, she revealed that she did not go there as she has already been there but she was told that she did not own the land.

After going through the submissions by both parties to this appeal and upon perusal of the trial court's records, I now proceed to determine the appeal starting with the 3<sup>rd</sup> ground of appeal. In this ground of appeal, the appellant has claimed that the respondents have acted contemptuously of the decision of this court a claim which was ardently disputed by the appellant. In my scrutiny of the record, I have observed that, this dispute had earlier been before this court. It landed for the first time in this court in 2021 when the appellant filed Civil Appeal No. 2 of 2021 challenging a ruling of the trial court which struck out her suit after it held that the appellant had no cause of action. Prosecuting the appeal, the appellant argued that the trial court's finding and the order striking out her suit was predicated on an issue raised *suo motto* by the court and decided without affording the parties the right to be heard on such an issue. Convinced by the appellant's submission, this court allowed the appeal and ordered remission of the case file to the trial court with directives for the trial court to determine the two points of preliminary objection raised by the respondent as they were left undetermined. This order was implemented. The case file was remitted to the trial court and the two points were determined in a ruling which is the subject of this appeal. The third ground of appeal that the trial court offended the directives of this court is, thus, without merit and is hereby dismissed.

Turning to the first two grounds of appeal which I prefer to consolidate as they both deal with the trial court's jurisdiction, it is indeed the position of the law that jurisdiction, defined by **Oxford Dictionary of Law**, 5<sup>th</sup> Edition as the "The power of a court to hear and decide a case or make a certain order," is critical to any case be it criminal or civil. Thus, it is trite that it be ascertained. As held by the Court of Appeal in the case of **Fanuel Mantiri Ng'unda Vs Herman Mantiri Ng'unda & 20 Others**, Civil Appeal No. 8 of 1995 (unreported):

"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature ... **The question of jurisdiction is so fundamental that courts must as a 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 with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case." (Emphasis added)

It is similarly trite that jurisdiction of courts being a creature of statutes can neither be assumed nor clothed on the court by the parties (See, **Aloisi Hamsini Mchuwau & Another vs Ahamadi Hassan Liyamata**, Criminal Appeal No. 583 of 2019 CAT at Mtwara (unreported)). With these two principles in mind, it is of paramount importance that the issue of jurisdiction be ascertained at the earliest opportunity early so as to be sure whether the court/tribunal is clothed with authority to determine the matter before it.

In the appeal at hand, the appellant's main argument is that, the trial court's finding that the suit was a land matter hence outside its jurisdiction, is erroneous as her claims was for compensation arising from demolition of her house. On the other hand, the respondent's counsel has ardently argued that the matter is a land dispute as the compensation was claimed out of an eviction and demolition carried out after the appellant was declared a trespasser in the suit land. In the foregoing, it was argued that, determining whether the applicant has suffered damages and whether she is entitled to the compensation claimed would require the court to determine the lawfulness or otherwise of the eviction and demolition and implicitly, the ownership of the land on which the demolished house was built so as to ascertain whether or not the appellant was a trespasser. Certainly, this surpasses the jurisdiction of an ordinary court. As per the law prevailing in our jurisdiction, land disputes are reserved for the exclusive jurisdiction of land courts established Under the Land Disputes Courts Act, Cap 216. Section 3(1) of this Act states thus:

**3.-(1)** Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.

Further, under section 4 (1) it states that;

**4.-(1)** Unless otherwise provided by the Land Act, **no magistrates' court established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act.**

(2) Magistrates' courts established under the Magistrates' Courts Act **shall have and exercise jurisdiction in all proceedings of a criminal nature under the Land Act and the Village Land Act.** [emphasis added].

Thus, save for proceedings of criminal nature, an ordinary court not entertain or determine a land dispute. A land dispute as per section 2 of the same Act, encompasses disputes over the land itself, things naturally growing on the land, buildings and other permanent affixtures. Going by this definition, it is undoubted that an eviction and or demolition of a house is a land matter and disputes arising thereof are land disputes subject to the exclusive jurisdiction of land courts. Since it is vividly clear from the abbreviated facts above that the genesis of the compensation claimed in the trial court is an eviction/demolition of the house which is a land matter I, find no reason upon which to fault the finding of the trial court that the dispute was a land dispute and ought to have been filed before land courts as opposed to an ordinary court which as per section 4 above, is not clothed with jurisdiction to entertain land disputes save the ones with criminal nature which is not the case in point as the appellant's claim before the trial court were purely civil in nature.

It is also worth mentioning that the Land Disputes Courts Act become operational on 01/10/2003 and according to the appellant, the cause of action arose on 07/11/2003. Hence, her claims ought to have been filed in the appropriate forum.




I may also add that, the intriguing revelation by the appellant during the hearing of this appeal whereby she disclosed that, she is reluctant to institute her claims in the District Land and Housing Tribunal as she has already been there but was adjudged a trespasser, a decision she is not happy with. Assuming that the disclosure is true, it obviously confirms the finding of the trial court as regards the nature of the dispute between the parties.

In the upshot, the appeal is seriously wanting in merit and is hereby dismissed. Since the respondents have voluntarily forfeited claims for costs from the appellant whom they consider indigent, I make no orders as to costs. It is so ordered.



**DATED and DELIVERED at MOSHI** this 11<sup>th</sup> day of January, 2023.

X 

Signed by: J.L.MASABO

**J.L. MASABO**

JUDGE

11/1/2023