

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

**(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**LAND APPEAL NO. 77 OF 2022**

*(Arising from Land Appeal No. 43 of 2022, in the District Land and Housing Tribunal for Kilosa, at Kilosa, Originating from Land Case No. 105 of 2020 at Magole Ward Tribunal)*

**GASPER PASCAL LYIMO.....APPELLANT**

**VERSUS**

**CHRISTINA PETRO DOTO ..... RESPONDENT**


**JUDGMENT**

**13<sup>th</sup> & 27<sup>th</sup> June, 2023**

**CHABA, J.**

At the Magole Ward Tribunal, the respondent herein sued the appellant over two metres portion of a parcel of land located at Magole Village vide Land Case No. 105 of 2020. Upon hearing the evidence of both parties along with visitation at the locus in quo, the trial Ward Tribunal adjudged in favour of the appellant.

Dissatisfied with the decision of the trial Ward Tribunal, the respondent Christina Petro Dotto appealed to the District Land and Housing Tribunal for Kilosa (the DLHT) in Land Appeal No. 43 of 2020. Having heard the appeal, the DLHT overturned the decision of the trial Ward Tribunal. Consequently, it declared that the appellant was not a lawful owner of the portion of land in dispute, and ordered each party to surrender one metre between their respective parcel of land which are adjacent.



Aggrieved by that decision, the appellant has approached this court, intending to challenge the impugned decision of the DLHT based on the following grounds of appeal, in verbatim: -

1. That, trial court erred in law by not considering the requirement of joining the necessary party;
2. That, trial court erred in law by ignoring the bonafide evidence;
3. That, trial court erred in fact by misdirecting herself regarding the disputing property in land (that is two meters) to be a demarcation while it is the property of the appellant;
4. That, judgment is vague and paradox; and
5. That, trial court left some issue unsolved.

At the hearing of the appeal, the appellant appeared in person and unrepresented, whereas the respondent for reasons better known to herself never entered appearance despite of being served with ordinary summons and the substituted services which was effected by way of publication through Mwananchi local Newspaper dated 23<sup>rd</sup> May, 2023, 30<sup>th</sup> May, 2023 and 3<sup>rd</sup> June, 2023.


In his brief oral submission in support of the appeal, the appellant firstly gave a brief background to the appeal. He told the Court that, after the respondent unsuccessfully sued him at the Magole Ward Tribunal on the dispute relating to boundaries, she filed an appeal before the DLHT at Kilosa where the

first appellate tribunal declared that there was no winner but each party had to surrender one metre portion of land from the palm tree to form a boundary between them. He added that, the respondent instead of adhering to the order of the DLHT, decided to cut of the palm tree and planted a banana tree as a mark of boundary between their respective plots.

In the end, the appellant who didn't submit on the grounds of appeal, prayed this court to declare the palm tree to remain the boundary between the two adjacent plots and not the banana tree which was planted after the judgment of the DLHT dated 31/05/2022. He further prayed the court to adopt and consider his grounds of appeals as filed.

In the course of considering and determining the grounds of appeal as presented by the appellant, I had ample time to peruse the entire records of the District Land and Housing Tribunal (DLHT) and discovered that the judgment of the DLHT was tainted with an irregularity that in my view jeopardized justice to both parties and most especially the respondent herein.

Upon scrutiny of the petition of appeal filed by the appellant before the DLHT, the same contained seven (7) grounds for determination as follows: -


1. That, the trial tribunal failed to properly examine, evaluate and analyse the gravity and weight of evidence on record;
  2. That, the trial tribunal erred in law and fact for not being well constituted;
- 



3. That, the trial ward tribunal erred in law and in fact for entertaining the matter while the time limits for respondent to claim over the suit land is time barred;
4. That, the ward tribunal erred in law and in fact for entertaining the matter by infringing the principle of natural justice for not considering and recognize the statement adduced by the appellant's witnesses;
5. That, the ward tribunal erred in law and fact by failing to put into consideration that the respondent had no locus standi to claim over the suit premise;
6. That, the trial ward tribunal erred in law and fact for hearing the parties without joining the necessary party to the suit; and
7. That, the trial tribunal erred in law and in fact by pronouncing the defective judgment.

Upon examining the judgment of the DLHT, it is plainly clear that the Learned Chairperson only determined the first ground of appeal, **as to whether the trial tribunal properly examined, evaluated and analysed the gravity and weight of evidence on record**, leaving other grounds unattended.

I am alive to the stance that, courts of law are required to ensure that every ground of appeal raised on appeal must be considered and determined to its finality. This position was enunciated in the case of **Malmo Montagekonsult AB Tanzania Vs. Margaret Gama**, Civil Appeal No. 86 of 2001, CAT sitting in Dar Es Salaam (unreported), in which the Court observed that: -



"In the first place, an appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is, however, expected to address the grounds of appeal before it..."

Fortified by the above position of the law, the Court of Appeal in the case of **Hatari Masharubu @ Babu Ayubu Vs. R**, Criminal Appeal No. 590 of 2017, CAT sitting at Mwanza (unreported), emphasized and amplified thus:

"However, we wish to remind first appellate courts to always ensure that unless the grounds of appeal are compressed thereof and the reason given, each ground must be considered and determined to finality."

Reverting to the matter at hand, at page 4 of the typed judgment of the DLHT, the reasoning of the Learned Chairman shows that, he couldn't determine the other grounds as the first one was capable of disposing of the whole appeal without resorting to other grounds of appeal. However, so far as I am aware, I agree that the appeal can be disposed of based on a single ground of appeal without testing other grounds, but only if the same is purely a point of law and not a matter of fact.

With due respect to the Learned Chairperson who sat at the first appellate tribunal, it is my considered view that, it was wrong for him to dispose of the appeal on mixed points of law and fact (evaluation of evidence) while leaving



unresolved pure points of laws narrated on grounds 2, 3, 5 and 6 respectively, which touches on the issues of time limitation, non-joinder of necessary party, locus standi and composition of the trial ward tribunal. In my settled view, the first ground of appeal could only dispose of the entire appeal if it was a single ground of appeal in the absence of other grounds which raised concerns on the matters of laws in the judgment and proceedings of the Magore Ward Tribunal. In the circumstance, the DLHT was not justified to dispose of the appeal summarily based on a single ground of improper evaluation of evidence as the same prejudiced the parties' right to a fair trial and hence occasioning miscarriage of justice.

Due to the irregularities found in the proceedings of the first appellate tribunal, this court is empowered under sections 42 and 43 of the Land Disputes Courts Act (CAP. 216 R. E, 2019) to revise the proceedings of the District Land and Housing Tribunals and even the trial Ward Tribunal if it appears that there has been an error material to the merits. More specifically, section 43 (1) (b) the Land Disputes Courts Act (supra) provides that: -

"Section 43 (1) - In addition to any other powers in that behalf conferred upon the High Court, the High Court: -

(b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original, appellate or revisional jurisdiction, on application being made in that



behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit"

Fortified by the above provisions of the law, this court in the case of **Joram Kaale Vs. Selemani Ally Selemani (Misc. Land Case Appeal No. 127 of 2015) [2018] TZHCLandD 51 (16 March 2018)** extracted from tanzlii.go.tz., was faced with a similar situation and at the end of the day, it quashed and set aside the proceedings and decisions of both the lower tribunals and ordered the matter to be remitted to the trial Ward Tribunal to be tried de-novo upon finding out that the DLHT did not determine all the seven grounds of appeal which were raised therein.

From the above reasoning and analysis, I find no reason to determine the grounds of appeal as filed by the appellant, and instead therefore, I invoke the revisional powers bestowed to this Court under section 43 (1) (b) of the Land Disputes Courts Act (supra). It follows therefore that, the judgement and decree of the District Land and Housing Tribunal for Kilosa, at Kilosa and any other orders sprang therefrom are hereby quashed and set aside respectively.

The case file is remitted back to the first Appellate District Land and Housing Tribunal for Kilosa, at Kilosa for a fresh determination of the grounds of appeal, preferably before a different Chairperson and new set of assessors



so as to ensure that justice should not only be done, but it must be seen to be done. Each party to bear his or her own costs. **It is so ordered.**

**DATED** at **MOROGORO** this 27<sup>th</sup> day of June, 2023.

  
M. J. CHABA

**JUDGE**

**27/06/2023**

