

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

MISC. LAND APPEAL NO. 18 OF 2023

(Appeal from the Judgment and decree in Land Appeal No. 1 of 2022 before District Land and Housing Tribunal for Babati at Babati)

JOHARI JUMANNE.....APPELLANT

VERSUS

JUMA SWALEHE.....RESPONDENT

JUDGMENT

29/5/2023 & 13/7/2023

BARTHY, J.

The above-named respondent sued the appellant for trespass before the Endagaw Ward Tribunal (hereinafter referred as the trial tribunal) for allegation of trespassing to her land measuring about two acres (to be referred to as the suit land).

The trial tribunal decided in favour of the respondent herein who was declared the lawful owner of the suit land. The appellant aggrieved with the decision of the trial tribunal, she preferred an appeal before the District Land



and Housing Tribunal for Babati (the DLHT). Upon hearing the parties, the DLHT dismissed the appeal for want of merits.

Still daunted, the appellant preferred the present appeal to challenge the decisions of the two tribunals below with eight (8) grounds of appeal as follows;

- 1. That the first appellate tribunal erred in law and fact for failure to appreciate that the trial ward tribunal delivered its judgment while it was not well constituted as required by the law hence it was with (sic) no jurisdiction.*
- 2. That the first appellate tribunal erred in law and fact by (sic) failure to appreciate that the appellant was denied her right to be heard by the ward tribunal.*
- 3. That the ward tribunal was with (sic) no jurisdiction and mandate to deliver judgment by virtual [sic] of Section 13(4) of the Act No. 5 of 2021 which amends Cap 216 RE 2019.*
- 4. That the first appellate tribunal erred in law and in fact in blessing (sic) the illegal and unprocedural judgment*

of the Endagaw Ward Tribunal in application number 5 of 2021.

- 5. That the first appellate tribunal erred in law and fact in blessing the judgment which has been born (sic) from proceedings which is conducted and recorded against the law and procedure.*
- 6. That the first appellate tribunal has failed to appreciate that Endagaw Ward Tribunal judgment is null and void ab initial for being unsigned (sic) and undated.*
- 7. That the first appellate tribunal erred in law and facts by (sic) blessing the judgment which was signed by the ward tribunal secretary which is against the law and touches the jurisdiction of the ward tribunal.*
- 8. That the first appellate tribunal failed to appreciate that the appellant herein was not served with summons and no proof of serve [sic] was tendered as required by the law.*

The court invited the parties to address the grounds of appeal by way of written submissions. The parties were required to prepare their written

submission in not more than 4 pages. However, the appellant in his written submission in chief prepared by advocate Gwakisa Sambo had 8 pages. The respondent reply submission dully complied with the order of the court. The appellant's rejoinder submission again had more than four pages ordered by this court.

However, with the nature of this appeal, the court will consider the third ground only, which is about the jurisdiction of the trial tribunal to determine the matter. As this ground alone may dispose the entire appeal.

Submitting on the third ground of appeal the appellant argued that, at the time the trial tribunal delivered its judgment it lacked the jurisdiction to determine the matter. He pointed out to the amendments on Land Disputes Courts Act [CAP 216 R.E 2019], (the Act) vide Written Laws (Miscellaneous Amendment Act) No. 3 of 2021 which became operational from 11/10/2021.

The appellant further submitted that with the amendments, the provision of Section 13 of the Act was amended and the ward tribunals were stripped off its powers of adjudication and left with powers for reconciliation only.



It was further submitted that; the amendment touched on procedural part and therefore operates retrospectively. To bolster his argument, the appellant referred to the case of **Felix H. Masha and another v. Exim Bank Tanzania Limited**, Civil Reference No. 12 of 2017, Court of Appeal of Tanzania at Dar es Salaam (unreported) held that, where the amendment of the law affects a procedural step or matters only, it acts retrospectively, unless good reason to the contrary is shown.

The appellant also referred the case of **Yacobo Gobre v. Raphael Daniel**, Misc. Land Appeal No. 24 of 2022 (unreported). The appellant further pointed out that, at the time the judgment was delivered by the trial tribunal on 22/11/2021 the amendment was already in place since 11/10/2021. Therefore, the trial tribunal had no jurisdiction to adjudicate over the matter.

The respondent on his reply submission he claimed to be lay person who can hardly comprehend legal issue. He also pointed out that the appellant had filed his written submission in chief in Kiswahili which was not the language of this court.



He further retorted that, the appellant on his submission he only submitted to the first, second, third, fifth and eighth grounds of appeal.

With respect to the third ground of appeal, the respondent maintained that, the matter before the trial tribunal was lodged on 28/11/2021 but the appellant was absent on often times as the matter would have been determined prior to the amendment of the law which stripped off powers of the trial tribunal. He prayed not to be punished as he did what he could do to get his justice.

The appellant on his rejoinder submission he pointed out that the respondent misconceived in his reply submission claiming that the appellant had made his submission in chief in Kiswahili while only few titles of certain officials were referred in Kiswahili and that the appellant abandoned some the grounds of appeal while they were argued jointly.

With respect to the issue of jurisdiction the appellant stated that it can be raised at any stage as it affects the root of the case. To reinforce his argument, he cited case of **Juma Mtungure v. The Board of Trustees of the Tanganyika National Parks t/a Tanzania National Park**, Civil Application No. 22/02 of 2020 Court of Appeal at Arusha.



Having gone through the submission of the parties in respect of the third ground of appeal, it is not in dispute that the trial tribunal delivered its judgment on 22/11/2021.

It is also not in dispute that the Written Laws (Miscellaneous Amendment Act) No. 3 of 2021 was assented to by the President on 28/9/2022 and became operational on 11/10/2021.

Before determining the merit or otherwise of this appeal, I wish to address on the issue of Kiswahili language raised by the respondent in his reply submission who claimed the appellant's submission in chief was in Kiswahili. I beg to differ with his observation as the said submission was in English save for few words that were referred in Kiswahili. For that reason, it wont affect the content of the said submission.

Therefore, with respect to the appeal at hand, the pertinent issue to be addressed by this court is whether the trial tribunal ceased to have jurisdiction over the matter following the amendment No. 3 of 2021.

With respect to the issue at hand, this court is alive to the principle that the issue of jurisdiction can be raised at any stage even on appeal.



This position was underscored in several case laws such as **Shahida Abdul Hassanal Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999, **Yussuf Khamis Hamza v. Juma Ali Abdalla**, Civil Appeal No. 25 of 2020 and **R. S. A. Limited v. Hanspaul Automechs Limited Govinderajan Senthil Kumal**, Civil Appeal No. 179 Of 2016 (all unreported). In the latter decision the Court of Appeal observed that;

The jurisdiction to adjudicate any matter is a creature of statute, an objection in that regard is a point of law and it can be raised at any stage.

The law as it was prior to the amendment effected by the Written Laws (Miscellaneous Amendment Act) No. 3 of 2021, the Ward Tribunals had powers to adjudicate land disputes as provided under Section 16 of the Act.

Following the amendment, the Ward Tribunal's powers of adjudication were stripped off and now they are left with primary function to reconcile the parties.

On the first appeal before the DLHT the point of jurisdiction was raised among other grounds of appeal, but in dismissing the said ground, the learned chairperson observed that the amendments of the law cited above did not affect the matter which was pending before the trial tribunal.

With respect to the learned appellate chairperson, the amendments did affect the matter which was pending before the trial tribunal. As pointed out in the case of **Felix H. Masha and another v. Exim Bank Tanzania Limited** (supra) in which on page 7 the Court of Appeal observed thus;

We are mindful of the position of the law that when an amendment of the law affects a procedural step of matter only, it acts retrospectively unless good reason to the contrary is shown."

The similar position was further underscored in the case of **The Director of Public Prosecutions v. Jackson Sifael Mtares & three Others**, Criminal Appeal No. 2 of 2018 Court of Appeal of Tanzania at Dar es Salaam (unreported) where the Court held that;

Normally, it may not be made to apply retrospectively where the said legislation affects the substantive rights of the "potential victims of that new law. On the other hand, however, if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.

It follows therefore that, the trial tribunal to proceed with the determination of the matter despite the amendment being in place, in

essence it acted without having the jurisdiction to do so. As the trial tribunal was only tasked to reconcile the parties and not determine the matter. Henceforth, the decision of the trial tribunal was a nullity.

Consequently, the decisions of the trial tribunal as well as that of the DLHT are quashed and set aside. As the way forward, the parties are at liberty to file a fresh matter in accordance with the current law regulating land disputes. With the circumstance of this case, I order each party to bear its own costs.

It is so ordered.

Dated at Babati this 13th July 2023




G. N. BARTHY,

JUDGE