

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

**THE SUB-REGISTRY OF MWANZA**

**AT MWANZA**

**LAND APPEAL NO. 17 OF 2023**

*(From Land Appeal No. 33 of 2022 at the District Land and Housing Tribunal  
for Mwanza at Mwanza; same originating from Mukituntu Ward Tribunal)*

**SEFROZA ROCKI GOLANI.....APPELLANT**

**VERSUS**

**GUNZE LADISLAUS MAHENDEKA.....RESPONDENT**

**JUDGEMENT**

*June 26<sup>th</sup> & July 21<sup>st</sup>, 2023*

**Morris, J**

The appellant above stands dissatisfied with the judgement of the District Land and Housing Tribunal (DLHT) in Land Appeal No. 33 of 2022. She has, thus, preferred this second appeal. Three grounds are fronted form the basis of her appeal hereof. She alleges that, the trial tribunal had no jurisdiction; the appellant had the necessary *locus standi* to sue the respondent; and the trial tribunal was improperly constituted.



In brief, the parties' dispute is over a farm situate at Mukituntu Ward of Ukerewe District at Mwanza (the suit land). Previously, one **Golani Magoti** – the appellant's spouse had unsuccessfully sued the respondent over the suit land before the same ward tribunal. Therefrom, he appealed to the DLHT under Land Appeal No. 101 of 2015. The appellate tribunal nullified the judgement and proceedings of the ward tribunal on the basis that the respondent was not accorded the right of being heard. DLHT further ordered the matter to be heard afresh in a tribunal/court with competent jurisdiction.

From the foregoing decision, the appellant herein (not her husband who was in the previous-nullified proceedings) sued the respondent over the suit property in the same ward tribunal. She failed. Consequently, the trial tribunal declared the suit land to be owned by the respondent. The appellant appealed to the DLHT which held that she had no *locus standi* to sue as previous proceedings were in the name of **Golani Magoti**. Aggrieved by such holding, she hence, have these appellate proceedings initiated.

Hearing of this appeal proceeded by way of written submissions. Parties dutifully complied with the filing-schedule set by the court. The





appellant was represented by advocate Prudence Buberwa while the respondent appeared in person, unrepresented. I will consider the submissions of both parties while determining whether or not this appeal has merit to warrant the claimed remedies. The grounds of appeal are discussed seriatim below.

Regarding the 1<sup>st</sup> ground of appeal; the court is to make an examination of whether the ward tribunal had jurisdiction to determine the matter before it. It was submitted by the appellant that, under section 13 (4) of ***the Land Disputes Courts Act***, Cap 216 R.E. 2019; DLHT only hears matters certified by the ward tribunal to be unsettled. The ward tribunal, therefore, enjoys the jurisdiction to resolve the matter amicably only. That is, when it fails reconcile the parties, it should refer them to DLHT for institution of and litigation over a land dispute. To the contrary, herein the ward tribunal adjudicated the rights of parties by declaring the respondent a rightful owner. Thus, to the appellant, the ward tribunal decided rights of parties in this appeal.

In reply, it was submitted by the respondent that, the DLHT heard the case which was not amicably resolved by the ward tribunal. Therefore, the



ward tribunal properly addressed the parties to refer their dispute to DLHT. He naturally prayed for the dismissal of this appeal.

I have considered the submissions of both parties. I reckon that this ground was not raised and discussed by the first appellate court. However, it being a jurisdictional aspect, it can be determined by this court. See the cases of ***Shabir Tayabali Essaji v Farida Seifudin Essaji***, Civil Appel No 180 of 2017; and ***John Barnabas v Hadija Shomari***, Civil Appeal No. 195 of 2018 (both unreported).

Jurisdiction is, in principle, a creature of the statute. Parties cannot, thus, by their choice cloth the court with jurisdiction. The court, too, cannot confer jurisdiction upon itself. Reference is made to two unreported cases of ***National Bank of Commerce Limited and 4 others v National Chicks Corporation Limited***, Civil Appeal No. 129 of 2015; and ***Abdallah Ally Selemani t/a Ottawa enterprises (1987) vs Tabata Petrol Station Co. Ltd and Another***, Civil Appeal No. 89 of 2017.

Related to the present appeal, is an incontestable position that from 11<sup>th</sup> October 2021; the ward tribunal was stripped off its adjudicatory powers over land disputes. Effective such date, it is no longer having



jurisdiction to hear or entertain any proceedings affecting the title or interest in land in a litigation mode. These changes are vide sections 45 and 46 of ***the written Laws (Miscellaneous Amendments) (No. 3) Act***, Act No. 5 of 2021. Its jurisdiction is, now limited to resolution of the dispute. Not adjudication. When the ward tribunal fails to reconcile the parties, it certifies to that effect and refers parties to have their unsettled-matter determined by the DLHT. At the latter tribunal, the proceedings take a form of a fresh case not an appeal. Further, when the matter stands unsettled at the ward tribunal for 30 days, either party is at liberty to institute proceedings before the DLHT without the certificate from the ward tribunal.

In this case, the ward tribunal adjudicated the rights of the parties. It went ahead and made the declaration that the respondent was the rightful owner of the suit land. It further notified parties of their right of appeal. Therefrom, matter was escalated to DLHT in the form of appeal. Thereafter, the current appeal. In my view; the ward tribunal assumed jurisdiction. In nullifying the matter under Appeal No. 101/2015, parties were advised by the appellate district tribunal to have their controversies determined by the court/tribunal with competent jurisdiction. However, they subjected



themselves to the tribunal with no jurisdiction. In its illegitimate endeavour to resolve the dispute before it, it overstepped its statutory mandate. In own wise-but-misplaced phraseology, the trial tribunal documented that;

*"...kwa vile eneo lenye mgogoro lilisha fanyiwa kesi na watu wawili tofauti na eneo ni lilelile na baraza la ardhi la wilaya kulirudisha ili lisikilizwe upya kwenye baraza la kata kwahiyo baraza hili **linawasuluhisha** kama ifuatavyo...**mdaiwa aendeleo kutumia eneo hilo kama mali yake** aliyopewa na baba yake.... **Rufaa** iko wazi...."* (bolding rendered for emphasis).

In law, matters determined by courts or related legal fora without jurisdiction become null and void. The appeal therefrom also becomes a nullity. Consequently, the first ground of appeal has adequate merit. For the reason that this ground exclusively suffices to dispose the present appeal, I find no need to discuss other grounds of appeal. The decision of the Mukituntu Ward Tribunal and appellate proceedings, judgement and decree therefrom are hereby quashed and set aside.

In effect, therefore, parties are restored to their position after the outcome of appeal No. 101 of 2015. That is, any interested party reserves



the liberty to pursue his/her rights in a competent court or tribunal. Each party is ordered to bear own costs. It is so ordered.

Parties' right of appeal is fully explained to them.



**C.K.K. Morris**

**Judge**

**July 21<sup>st</sup>, 2023**

**Judgement** is delivered this 21<sup>st</sup> day of July 2023 in the presence of Ms. Sefroza R. Golani and her counsel, Mr. Buberwa Prudence; and Mr. Gunze L. Mahendeka, the respondent.

**C.K.K. Morris**

**Judge**

**July 21<sup>st</sup>, 2023**