**IN THE HIGH COURT OF TANZANIA**

**BUKOBA DISTRICT REGISTRY**

**AT BUKOBA**

**MISC. LAND APPEAL NO. 83 OF 2022**

*(Arising from Muleba District Land Housing Tribunal in Land Appeal No. 55 of 2020 Originating from Civil Case No. 01/2020 at Ikondo Ward Tribunal)*

**ADRIAN PROTASE TEGAMAISHO..... APPELLANT**

**VERSUS**

**INOCENT SYRIDION..... RESPONDENT**

**JUDGEMENT**

**K. T. R. MTEULE, J.**

**15th June 2023 & 26th June 2023**

This appeal arises from the District Land and Housing Tribunal of Muleba (DLHT) in **Land Appeal No. 55 of 2020,** originating from **Civil Case No. 01 of 2020** at Ikondo Ward Tribunal. Vide **Civil Case No. 01 of 2020** the Appellant herein sued the respondent herein in Ikondo Ward Tribunal asserting that the Respondent and his fellow named Method John who was 2nd respondent by then, trespassed into his land causing malicious damages to the property which was a land located at Butokolo village Council. The appellant was claiming for the disputed land to be returned to him and to be paid compensation for the malicious damage to the property.

The ward tribunal issued a decision against the appellant by declaring that the respondent is a lawfully owner as per a sales agreement, supported by evidence of two witnesses. This decision aggrieved the appellant who filed **Appeal No. 55 of 2020** before DLHT. The DLHT upheld the decision of Ward Tribunal on the reason that the evidence of the appellant does not state the exact boundaries of the disputed land.

Being resentful by the judgement and decree from (DLHT), the appellant herein preferred this appeal encompassed with two (2) grounds as follows; -

i. That, the two-trial tribunals erred in law to handle the suit without pointing out the value of the suit land so as to determine particularly the pecuniary jurisdiction of the Ikondo Ward Tribunal.

ii. That the trial Tribunal erred in law as it carelessly handled the evidence of Method John who identified the appellant as his neighbor.

iii. That the trial Tribunal erred in law to accept and record new evidence when visited the suit land and the appellant was not allowed to question the witnesses; the evidence of SYIRIVER

JASSO, CROSPER BIGESA, MARTIN BALTHAZARY was not questioned, nor they were put under oaths.

iv. That the trial Tribunal erred in law to accept and bless a forged sale agreement presented by the respondent, ie; the sale agreement did not indicate the size of the land purchased, the sale agreement was not signed by the village chairman, no witness of the parties, not stated the area under which the disputed land is located.

The Appellant prayed for this court to allow the appeal and nullifying the two lower Tribunal decisions for want of illegality. He further prayed for any other relief this court may deem just and fit to grant.

The appeal was disposed of by way of written submissions. The appellant appeared in person, and filed his written submissions prepared by himself, whereas the respondent was represented by Mr. Dunstan Mujaki, advocate. I appreciate both parties for complying with the Court's schedule in filing the submissions. All the submissions are valued, and they will be taken on board in determining this appeal.

From the grounds of appeal and the parties' submissions, the issue for determination is **whether the Appeal has any merit.**

In addressing the above issue, I will start with the first ground of appeal which asserts that the trial tribunal did not have a pecuniary jurisdiction over the matter, the appellant's Counsel contended that the value of the disputed land is more than three million contrary to Section 15 of the Land Act, which confers jurisdiction to the Ward Tribunal.

In supporting the argument, he cited different cases including the case of **Sospeter Kahindi v. Mbeshi Mashani,** Civil Appeal No. 56 of 2017, CAT, (unreported).

On the other hand, Mr. Mujaki submitted that since the appellant and the Respondent submitted themselves to be tried by the ward tribunal, then according to him this ground is baseless. Bolstering his position, he cited the case of **General Marketing Co. Ltd v. A. A Shariff** (1980) TLR 61. In resolving this contention, I find worth to consider the provision of **Section 123 of the TEA** which provides that; -

> *"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or proceedings*

*between himself and that person or his representative, to deny the truth of that thing."*

Further to that it is well established principle that things or issues not contested by the parties at the trial Court could not be raised at appellate level. This position has been addressed in the case of **Astepro Investment Co Limited v. Jawinga Company Limited, Civil Appeal No. 08 of 2015 (CAT) DSM (Unreported)** citing the case of **James Funge Ngwagilo v. The Attorney General [2004] TLR 161** it was held that;

*"...parties are bound by their own pleadings...the function of the pleading is to give notice of the case to a party must therefore, so state his case that his opponent will not be taken by surprise. If is also to define with precision the matters on which the parties differ and the points on which they agree, thereby to identify with clarity the issues on which the court will be called upon to adjudicate and determine the matter in dispute."*

From the above authorities, the act of the appellant to subject his dispute in the Ward tribunal meant that the value of the land was within the ambit of the pecuniary jurisdiction of the Ward Tribunal. Since there

is no valuation report to establish otherwise, the fact that the appellant believed the value to be within the pecuniary jurisdiction of the Ward Tribunal, it will be presumed as such and presenting a different view amount to afterthought.

In addition to what is already stated above, the issue of pecuniary value of the disputed land was not raised in the DLHT. This means, the Appellant moved the Ward Tribunal believing the value of the subject matter to be within the value allowed within the said Ward tribunal. The issue was not even raised in the DLHT. This means he still believed the value to be within the powers of the ward tribunal. Since the issue as to whether the disputed land exceed the pecuniarily jurisdiction was not contested at the trial Court, and not even raised in the DLHT, then I am of the view that the same could be raised at this stage on the reason that it needed evidence including the evidence valuation which ought to have been considered in the trial tribunal. For that reason, I find that the **first ground** of appeal holds no water, and it is an afterthought for it to be raised at this stage of appeal.

On the **second ground** the Appellant challenged the trial Tribunal for having carelessly handled the evidence of one Method John. The appellant challenged the evidence of this witness who testified about his

neighbourhood with the appellant as supported by Isidory Cryprian as reflected at page 7 to 20 and 30 of the trial judgement, which established his ownership. Strengthening his argument, he cited the case of **Paulina Samson Ndawagaya v. Theresia Thomas Madaha,** Civil Appeal No. 45 of 2017, CAT, at Mwanza.

On other hand, Mr. Mujaki Advocate for the respondent challenged the issue of the evidence of Method to have been raised in this Appeal for the first time. He added that the appellant failed to establish the location and address of the disputed land as testified by himself at page 4 of the trial proceedings.

I have gone through the grounds of appeal presented in the DLHT. I could not find that specific issue challenging the evidence of witness Method John. As stated above, grounds of appeal which raises a new issue at the second appellate level which was not raised in the 1st appellate level cannot be maintained. This second ground lacks basis.

Regarding the third ground on the averment of evidence recorded at the locus in quo without allowing the appellant to question the witnesses and without leading the witnesses to take an oath, the parties' contention is based on procedure while visiting the locus in quo. In his

submission the appellant is complaining to have been denied with the right to cross examine the witness at the site. He further averred that the witnesses did not take any oath. The respondent countered the submissions by arguing that there is no need of having technicalities in trial tribunal as per **Section 15 of the Ward Tribunals Act Cap 206 of 2019 RE**.

The DLHT resolved the issue of the procedure in the tribunal by holding that the Ward tribunals are not bound by legal technicalities as per Section 15 cited supra.

For the sake of clarity, the purpose of visiting a site is for verification of evidence adduced by the parties at the trial Court as was discussed in the case of **Bomu Mohamed v. Hamisi Amiri,** Civil Appeal No. 99 of 2018, Court of Appeal of Tanzania(unreported) where it was held; -

> *"We come now to the issue of locus in quo. In the first place we would like to put it clear that a visit to the locus in quo is purely on the discretion of the court. It is done by the trial court when it is necessary to verify evidence adduced by the parties during trial."*

The above authority justifies that in visiting the disputed land the trial tribunal is limited on verification of evidence adduced by the parties at

the trial and not necessarily taking of new evidence as contested by the appellant. Further to that, pursuant to Section 15 of the Wards Tribunals Act, the Ward tribunal is not bound by procedural formalities from the Evidence Act. In this respect, I agree with the findings of the DLHT that cross examination was not necessary in the Ward Tribunal and that it was not mandatory for the witnesses in the locus quo to take an oath. From this discussion, the 3 ground of appeal lacks merit.

On fourth ground that the trial tribunal erred in law to accept and biess the forged agreement, the appellant argued that the contract came to his attention as a surprise when he found it mentioned in the judgment and that the contract did not have stamp duty and that it was forged. The counsel for the respondent replied that the Respondent tendered the sale agreement which was supported by the evidence of the seller.

This issue was raised in ground No. 6 of the appeal. The Chairman of the DLHT considered it as an afterthought as both parties tendered their exhibits in the tribunal.

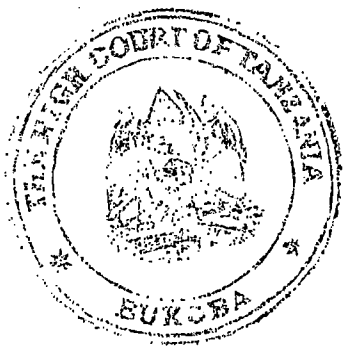
This Court being the 2nd appellate Court does not have advantages to reevaluate the trial evidence. The DLHT found that each party tendered evidence. I see no reason to differ with the decision of the DLHT which

had advantages of reevaluating the evidence of the trial tribunal. I may add that, if the appellant thought that the contract was forged, he should have initiated criminal proceedings to confirm such forgery. Otherwise, court record cannot be downgraded so easily. Ground No. 4 as well lacks merits.

From the above analysis, all the grounds of appeal are found to have no merit and therefore the framed issue is answered that the entire appeal has no merits.

Consequently, I hereby uphold the decision of the DLHT. The appeal is dismissed. No order as to costs. It is so ordered.

Dated at Dar es Salaam this 26th day of June 2023.




**KATARINA REVOCATI MTEULE**

**JUDGE**

**26/06/2023**