

**UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**HIGH COURT OF TANZANIA**

**MOROGORO DISTRICT REGISTRY**

**AT MOROGORO**

**LAND APPEAL NO. 143 OF 2022**

**(Originating from Misc. Civil Application no. 22 of 2022 of Ulanga District**

**Land and Housing Tribunal)**

**AGRIPA BAKARI HOSEA ..... APPELLANT**

**VERSUS**

**TUMAINI NNKO ..... RESPONDENT**

**JUDGEMENT**

Date of last order: 15/06/2023

Date of Judgement: 21/07/2023

**MALATA, J**

At the Ward Tribunal for Milola the respondent herein filed Land dispute no 22 of 2021 against the appellant for trespass on his three (3) acres of land located at Igamba in Mavimba village. The Ward tribunal decided in favor of the respondent. In the quest to execute the orders of the trial tribunal the respondent filed an execution no 26 of 2022 to the District Land and Housing Tribunal (herein to be referred as DLHT). The DLHT

ordered the appellant, his relatives, agents, or workman to be evicted from the disputed land.

Being aggrieved by the decision of the DLHT the appellant appealed to this court armed with two grounds of appeal namely;

1. That the District Land and Housing Tribunal for Ulanga at Mahenge erred in fact and in law for failure to act suo motto against impugned decision of trial tribunal.
2. That the District Land and Housing Tribunal of Ulanga at Mahenge erred in law and in fact for failure to recognize and appreciate The Written Law Miscellaneous Amendment (Act no.3) Act, 2021.

When this appeal came for hearing both parties were present, the appellant appeared in person unrepresented while the respondent was represented by Mr. Bageni Elijah learned counsel.

Submitting in support of the appeal the appellant stated that, the DLHT failed to recognize and honour the legal position that, the Ward Tribunal decision subject to execution arose from a nullity proceeding which was entertained without jurisdiction. The appellant referred this court to the Written Laws Miscellaneous Amendment no. 3 of 2021. The appellant further stated that, the cited Miscellaneous Act ceased the jurisdiction of Ward Tribunal to adjudicate all land disputes and conferred it with

mediation role only. Finally, he submitted that the DLHT ought to have honoured and invoked its revision mandate to call and revise the proceeding suo motto and nullify it for want of jurisdiction upon being informed by the appellant herein. As such, he prayed that, this court be pleased to allow the appeal and nullify all the decision and proceedings by the Ward Tribunal entered without jurisdiction. He prayed the appeal to be allowed with cost.

Submitting in opposition of the appeal Mr. Bageni Elijah stated that, what was before DLHT was execution proceedings and the DLHT had no jurisdiction to go beyond what was decreed by Ward Tribunal. The role of DLHT was to execute the decree and not otherwise. The complaint of the appellant, however strong was to be raised way of by appeal or revision, but the appellant didn't do so.

Mr. Bageni Elijah learned counsel referred this court to the case of **Jeremia Kamugisha vs. Geveva Ntima**, Misc. Land Appeal no. 53 of 2017 and **Fortunata Edga Kaungua vs. George Hassan Kumburu**, Misc. Civil Appeal no. 71 of 2019. Mr. Bageni stated that this appeal is with no merit and it has to be dismissed with costs.

By way of rejoinder the appellant simply asked the court to allow the appeal with cost.

From the submission of both parties and records of the appeal, it is undisputed that, **one**, the appellant herein is layperson who appeared in person in all instances, **two**, upon delivery of the decision by the Milola Ward Tribunal on 1<sup>st</sup> November, 2021 in land dispute no.22 of 2021 there was no appeal preferred by the Appellant herein, **three**, the respondent herein applied for execution of the Milola Ward Tribunal in the DLHT for Ulanga, **four**, the appellant raised the point of jurisdiction before DLHT but was not honoured though improperly raised, **five**, the DLHT delivered decision in an application for execution no. 26 of 2022 rejecting to consider the jurisdiction issue and ordered the appellant to be evicted from the land in dispute, **six**, aggrieved thereof, the appellant approached this court raising the issue of jurisdiction of the Ward Tribunal to entertain land dispute no. 22 of 2021.

The issue for determination is whether the DLHT correctly rejected the point of law touching jurisdiction of Ward Tribunal and the validity of the decision entered without jurisdiction.

To start with, the Ward tribunal is established under section 3 of the Land Disputes Courts Act [Cap.216 R.E 2019] and vested with jurisdiction to adjudicate land disputes. The jurisdiction of the Ward Tribunals to hear and decide land disputes was ousted through amendment made to the

Land Disputes Courts Act [Cap.216 R.E 2002] by the Written Laws (Miscellaneous Amendments) Act No.3 of 2021.

Before amendment of section 13 of the Land Disputes Court Act, Cap. 216 R. E. 2019 which conferred jurisdiction to Ward Tribunal depicted that;

*13. General jurisdiction*

*(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunal Act, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.*

*(2) Without prejudice to the generality of subsection (1), the Tribunal shall have jurisdiction to enquire into and determine disputes arising under the Land Act and the Village Land Act. [Cap. 113; Cap. 114].*

Following the amendment, section 13(2) of the Land Disputes Courts Act by the Written Laws (Miscellaneous Amendments) Act, No.3 of 2021 which was published in the Government Gazette of Tanzania IMo. 102, Vol. 41 dated on 11 October, 2021 the section reads that;

*"45. ' The principal Act is amended in section 13 by- (a) deleting subsection (2)".*

Following the amendment of section 13(2) by deleting the subsection, the Ward tribunal only retained the role of securing peace and harmony by mediating land disputes referred to it by the parties before the dispute is referred to the District Land and Housing Tribunal for adjudication.

The question therefore is what was the effective date of the said amendment?

Section 14 of the Interpretation of the Laws Act [Cap. 1 R.E 2019] gives a guidance as follows;

*"14. Every Act shall come into operation on **the date of its publication in the Gazette** or, if it is provided either in that Act or in any other written law, **that it shall come into operation on some other date, on that date**".*

In the instant amendment the Act came into operation on the date of publication as there is no specific date for its commencement. As such, the Ward Tribunal ceased to have jurisdiction to inquire into and determine land disputes with effect from 11<sup>th</sup> October, 2021 following the publication of the said amendment.

The Ward Tribunal's records show that, the tribunal inquired and heard land dispute between the parties herein and delivered its decision on November, 2021 being almost a one month after such jurisdiction having been taken through the said amendment with effect from on 11<sup>th</sup> October, 2021.

With the commencement of the amendment of the Land Disputes Courts Act on 11 October, 2021 Ward Tribunal ceased to have jurisdiction to hear and determine land matters save for mediation jurisdiction only.

The law transferred the adjudication jurisdiction to the District Land and Housing Tribunal. Since, jurisdiction is a constitutional or statutory creature and that there is no provision from any law exempting the pending dispute in Ward Tribunal to proceed in any other way following the said amendment, this court has no means to entrust and decide that the trial Ward Tribunal continued to have jurisdiction over such matter post 11<sup>th</sup> October, 2021.

Consequently, I hold that, the Ward tribunal had no jurisdiction to inquire and determine the land disputes no.22 of 2021. Therefore, the decision of Milola Ward Tribunal is a nullity *abi nitio*.

This appeal therefore arose from execution application no. 26 of 2022 seeking to enforce the award by the Milola Ward Tribunal in land dispute

no. 22 of 2021 which as stated above was a nullity for want of jurisdiction as such it was just a mere paper from the Milola Ward Tribunal. The issue of jurisdiction was raised by the judgement debtor/appellant before the appellate tribunal however in determination of the DLHT application for execution it was summarily rejected for reason, it was unmaintainable as the DLHT was determining application for execution not matters touching decision of the Ward Tribunal.

There are numerous decisions by this court and the Court of appeal to the effect that, issues of jurisdiction can be raised at any stage of the proceedings even at the appellate stage. In **Sospeter Kahindi vs. Mbeshi Mashini**, Civil Appeal no. 56 of 2017 (unreported) where the court of appeal had these to say;

***"At this point we would hasten to acknowledge the principle that the question of jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level.***

***Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision. We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction."***



Based on the above position of the law, the issue before this court is whether the DLHT had mandate to determine the raised issue of jurisdiction while adjudicating an application for execution of a decree obtained from a decision not appealed against.

Mr. Bageni Elijah learned counsel for the respondent submitted that, the DLHT was not mandated to determine the issue of jurisdiction while hearing execution proceedings because it was confined in executing the order from the Ward Tribunal.

This court bears a different view that, despite being raised in the execution proceedings and bearing in mind it had the effect making the execution proceedings a nullity, the DLHT ought to have entertained it by stepping into the shoes of its power of revision to ascertain the correctness, legality, propriety of the Ward tribunal.

In other jurisdiction, such kind of issue has been dealt with. I wish to borrow the wisdom from an Indian case of **Kiran Singh and others vs. Chaman Paswan and others**, 1954 AIR 340, 1955 CSR 117 where the Supreme court of India had this to say;

*"It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is*

*sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."*

With the judicial precedents of our courts in mind that, the issue of jurisdiction can be raised at any time of the proceedings, see the case of **Sospeter Kahindi vs. Mbeshi Mashini (supra)** and the case of **Richard Julius Rukambura Vs. Isaack Mwakajila** and Another Civil Appeal No. 3 of 2004, where the court of appeal held that;

*"The question of jurisdiction is fundamental in court proceedings and can be raised at any stage, even at the appeal stage. The court, **suo motu** can raise it and decide the case on the ground of jurisdiction without hearing the parties".* Since the issue raised by the appellant touched jurisdiction, had the effect of vitiating the decision of the Ward Tribunal, the DLHT wrongly rejected the point of law.

Further, the raised issue had effect of alerting the DLHT that it was executing a nullity as such the DLHT had to satisfy itself otherwise courts

and tribunal can close eyes on points of law which has the effect of making the proceedings before it or otherwise a nullity. By failure to honour it, the Courts and tribunals will be condoning illegalities while it is legally mandated to do otherwise suo motto or upon being moved by either of the party to the case.

Let it be known that, a nullity is always a nullity and that all what originates from it is also a nullity.

All said and done, I am of the settled view that, such point of law touching jurisdiction can be raised at any stage of any proceedings be it in appeal, review, or revision. As such, I differ from the position presented by Mr. Bageni Elijah that such point cannot be raised and entertained in an application for execution save in an appeal or revision.

That being the position, the DLHT had mandate to call the parties to address on the issue as it had the effect of turning the decision sought to be executed a mere paper upon upholding the point on jurisdiction. Having made aware of such issue, the DLHT had authority to call and examine the record of any proceedings before Ward tribunal for the purpose of satisfying itself as to the **correctness, legality or propriety of any finding, order or any other decision** made thereon in the exercise of its revisional powers.

The DLHT could have invoked powers under section 36 (1) of Land Disputes Court Act, which provides that;

*36. (1) A District Land and Housing Tribunal may call for and examine the record of **any proceedings** of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has*

*(a) not contravened any Act of Parliament, or subsidiary legislation;*

*(b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has **exceeded its jurisdiction, and may revise any such proceedings.***

The powers under section 36 (supra) are supervisory in nature which can be invoked upon application by either party or suo motto by tribunal itself even in the absence of pending matter before it.

Section 36 does not strip off the District Tribunal revisional jurisdiction in execution proceedings nor does it impose mandatory requirement to invoke such revisional powers when there is only appeal or revision application. The point of law raised had the effect of informing the DLHT that it was acting on a nullity.

It is undisputed that, the Ward Tribunal delivered decision of land dispute no. 22 of 2021 on 1<sup>st</sup> November, 2021, while by virtue of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2021 published in the Government Gazette No. 102, Vol. 41 dated on 11<sup>th</sup> October, 2021 made cessation of the Ward Tribunal's mandate to adjudicated land disputes with effect from 11 October,2021. Thus, the Ward Tribunal had no jurisdiction to adjudicate land disputes beyond the 11<sup>th</sup> October, 2021, Land dispute no. 22 of 2021 inclusive.

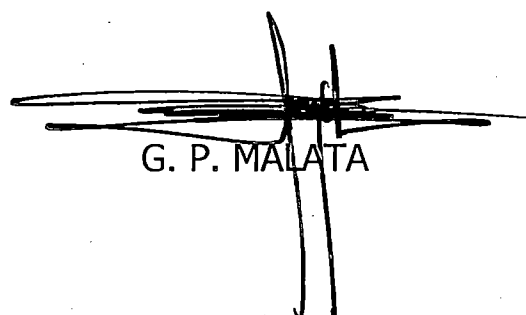
In the exercise of powers under section 43 of the Land Disputes Courts Act, Cap.216 R.E.2019, this court hereby revise and nullify the decision and proceedings in Land dispute no. 22 of 2021 of the Ward tribunal for want of jurisdiction and all subsequent proceedings of the DLHT for want of jurisdiction.

Should any party interested to pursue for the matter he/she may commence a fresh proceeding in accordance with the existing law.

Consequently, the appeal is allowed with no order as cost.

**IT IS SO ORDERED.**

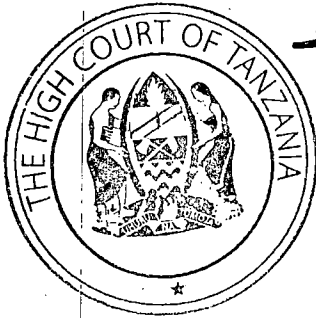
**DATED at MOROGORO** this 21<sup>st</sup> July 2023.

  
G. P. MALATA

**JUDGE**

21/07/2023

**DELIVERED** at **MOROGORO** this 21<sup>st</sup> July, 2023.



  
G. P. MALATA

**JUDGE**

21/07/2023