

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUB - REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 162 OF 2022

(Arising from the decision of the District Land and Housing Tribunal of Karatu at Karatu in Land Appeal No. 07 of 2021 originating from the decision of Rhotia Ward Tribunal in Land Case No. 13 of 2021)

MARIA AWE DAGNO _____ APPELLANT

VERSUS

GWANDU AKO GWANDU _____ RESPONDENT

JUDGMENT

25/08/2023 & 22/09/2023

BADE, J.

The Appellant appealed before this court against the decision of the District Land and Housing Tribunal of Karatu at Karatu in Land Appeal No. 07 of 2021 delivered on the 27th of September 2022. The appeal is based on the following 12 grounds.

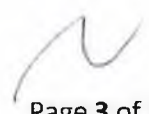
1. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by not finding that Rhotia Ward Tribunal was not clothed with jurisdiction to determine Land Case No. 13 of 2021.

2. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by holding that Rhotia Ward Tribunal was properly constituted.
3. That, Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by finding that there is no law requiring the presence of three women members out of four members at a sitting.
4. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by holding that Rhotia Ward Tribunal properly conducted itself by searching the Village Land Register from Rhotia village office without involving the parties.
5. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by declaring the Respondent lawful owner of the suit land based on village land register which was not admitted in the record as evidence and despite clear evidence in the record that the Respondent was not a registered owner.
6. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by declaring the Respondent the lawful owner of the suit land based on the village land register



without any evidence from Rhotia Village Authorities that the said register was ever availed for inspection by the ward tribunal.

7. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact by holding that the composition of the Ward Tribunal in land case No. 13 of 2021 was guided by section 4(3) of the Ward Tribunal Act, Cap. 206 RE 2019.
8. That, as the Respondent's evidence was full of contradictions and material discrepancies the Honourable Chairman of the District Land and Housing Tribunal erred in law and in fact by finding the Respondent's claim was sufficiently proved.
9. That, the Honourable Chairman of the District Land and Housing Tribunal grossly erred in law and in fact for not properly evaluating the evidence given before the Ward Tribunal and thus, arrived at a wrong and unfair decision.
10. That, the Honourable Chairman of the District Land and Housing Tribunal erred in law and in fact for failure to follow the binding decisions of the High Court cited and supplied by the Appellant, without assigning any reason.



11. That, the Honourable Chairman of the District Land and Housing Tribunal erred in law and fact for holding that the Respondent was in occupation of the suit land which finding is contrary to the Respondent's claim before the Ward Tribunal.
12. That, the Honourable Chairman of the District Land and Housing Tribunal erred in law and fact for not indicating the assessor's opinion in his decision which omission is without any legal justification.

The short background of this matter is that the Respondent is aggrieved and dissatisfied with the Judgment and Decree of the District Land and Housing Tribunal of Karatu at Karatu in Land Appeal No. 07 of 2021. Previously at the tribunal, the Respondent was alleged to have 6 acres located at Dagharo as per the distribution made by the village authorities in 1978, it is also in the record that the tribunal in seeking clarity for this fact, the tribunal visited the locus of the disputed land, to satisfy itself in reaching the decision. It was also his averment that the said land was trespassed by the Appellant in more than one and three-quarters of an acre, the result of which, a suit was filed and the respondent won and declared a rightful owner of the said land. The appellant was found to be an invader of the land in dispute which measures 4 acres and was ordered to stop doing any development in the

land as she was trespassing. The appellant was aggrieved by the tribunal's decision and appealed to the District Land and Housing Tribunal. That appeal did not bore her the fruit she expected and hence this appeal before the High Court.

Both parties argued the appeal by way of written submissions having obtained a court's leave to do so. In support of the appeal, out of the 12 grounds of appeal, counsel for the Appellant proposed to argue ground 1 separately and join ground numbers 2, 3, and 7 together. The appellant also proposed and proceeded, as it shall be convenient, to join more grounds and argue jointly.

Meanwhile, they clarified that the 1st ground arose out of the decision of the District Land and Housing Tribunal, and started on this ground, submitting that the Honourable Chairman of the District Land and Housing Tribunal is faulted for not finding that Rhotia Ward Tribunal was not clothed with jurisdiction to determine Land Case No. 13 of 2021. He reckoned that the decision of the Trial Ward Tribunal at page 1 of the typed Kiswahili proceeding, the dispute was received on 11th October 2021 because the



relevant part states that it was so received. Furthermore, at page 11 of the typed Kiswahili judgment, it is clear that the trial Ward Tribunal determined the dispute and delivered its decision on the 18th October 2021, as reflected by the record.

It is the Appellant's counsel's contention that the determination of the above-referred dispute by the trial Ward Tribunal was legally wrong and improper for want of jurisdiction, arguing further that the issue of jurisdiction of the Court can be raised at any time even at the appellate stage as in this case, making reference to the Court of Appeal decision in **Yusufu Khamisi Hamza vs Juma Ali Abdalla**, Civil Appeal No. 25 of 2020 (Unreported), holding:

"Of course, we are alive with the settled position of the law that time limitation goes to the jurisdictional issue of the Court and it can be raised at any time even at the appellate stage by the Court"

He insists that the Rhotia Ward Tribunal made the above-referred decision after the effective date of the amendment of the Land Disputes Courts Act limiting the jurisdiction of the Ward Tribunal to mediation. That is to say the Ward Tribunal's powers were limited to mediation and certifying that it has



failed to settle the matter amicably and therefore it is clear that the decision of the Ward Tribunal contravened section 13(4) of Land Disputes Courts Act 2002 as amended by Misc. Amendment Act No. 5 of 2021 published to special Gazette of the United Republic of Tanzania No. 41 Vol. 102 dated 11th October 2021.

He thus submits that the appellant maintains regarding the 3rd and 4th ground that on ascertaining the quorum of the Ward Tribunal, the Ward Tribunal Act, Cap 206, and particularly section 4 (3), and criticized the decision made by the tribunal to be legally wrong and improper because it was made in total disregard of the provision of Section 3 (1) (2) and 10 (1) of the Land Dispute Courts Act, Cap 216. He also cited the case of **Kassim Ngoroka vs Bernad Masembula**, Misc. Land Appeal No. 03 of 2016 (Unreported).

He also contend that the findings of the allocation is wrong and improper since the Ward Tribunal decided to search and consider this new evidence from the Register on its own accord without affording the parties a right to be heard before making the decision, citing the case of **Kluane Drilling (T) LTD vs Salvatory Kimboka**, Civil Appeal No. 75 of 2006.

Grounds 5 and 6 were also argued together, maintaining that in declaring as the lawful owner of the suit land, the Tribunal's decision was based on the Village Land Register which was not admitted in the record as evidence, despite controverting evidence in the record that the respondent was not the registered owner. Furthermore, he insists that there was no evidence from Rhotia Village Authorities to prove that the respondent is the lawful owner of the suit land.

Arguing Grounds 8 and 9, the Appellant's counsel elucidates on the contradiction and material discrepancy that rendered into a wrong decision, referencing the aspect of how, when, and why the transfer of the disputed land had changed ownership from the respondent's father Ako to the respondent, contradicting it with the testimony of the respondent witness saying Gwandu Ako was allocated 4 acres as recorded on page 2 of the ward tribunal decision, as well as his own testimony that the land was allocated to his father and that he got it from him as a gift. He further contends that another witness of the Respondent (Matle Dahaye) was recorded to have said the disputed land belonged to the respondent's family. Further still, it is alleged by yet another witness of the respondent (Qamara Yarot the former village chairman) the old man was allocated 6 acres, 4 of which were at the

Dagno Sighi's valley, and 2 were at Dagharo Duwanghe. So the counsel concludes these contradictions should not have been ignored by the Tribunal in its decision as they have led to an erroneous decision.

Regarding grounds 10 and 11, the Appellant faults the Chairman on failing to either follow or distinguish the High Court decision supplied by the Appellant, including the case of **Kassim Ngoroka vs. Bernard Masembula** and several others that were relied upon by the Appellant as authority. Also, in the aspect of the occupation of the suit land which finding is contrary to the respondent's claims before the ward tribunal.

On the 12th ground, the counsel argues that the District Land & Housing Tribunal reached its decision without indicating what was the assessor's opinion without any legal justification, an omission which he insists is fatal citing the case of **Ameir Mbarak and Anor vs Edgar Kahwili**, Civil Appeal No 154 of 2015 (unreported) where the Court insisted it is unsafe to assume the opinion of the assessors which is not recorded by simply reading the acknowledgement of the Chairperson of the tribunal.

In response, the respondent retorts through his submission against ground 1 of the appeal. In his view, the counsel for the appellant is misconceived in

thinking the Ward Tribunal had no jurisdiction to proceed to determine the matter after the amendment of the law since the matter was filed and heard before October 11, 2021. He insists that the decision was made on October 11, while the same was delivered to the parties on October 18, 2021, which is after the amendment of the law, and that all the hearings had already happened. In that regard, he holds this ground to be without merit.

With regard to the 2nd, 3rd, and 7th grounds of appeal, starting with the composition of the quorum he states that none of the provisions covers Section 4 (3) of the Ward Tribunals Act, Cap 216 which governs the sitting of the Ward Tribunal.

He also explains that section 11 of the Land Disputes Act does not govern the quorum at the sitting rather it governs the formation of the Ward Tribunal.

Responding to the 4th ground of appeal, he submits that there is no error committed by the Ward Tribunal as a result of raising a new issue suo motto rather it employs its own procedure to do justice. Likewise, the case of **Kluane Drilling (T) LTD vs Salvatory Kimboka** cited by the Appellant is

distinguishable from the case at hand because the said decision did not originate from the Ward Tribunal which governs its own procedure.

In further argument, replying to the 5th and 6th grounds of appeal, as per section 15 (1) and (2) of the Ward Tribunal Act, Cap 206 w makes it clear that the Ward Tribunal is not bound by strict rules of evidence and procedures, and have the power to regulate its own procedure.

He applies this reasoning to the 8th and 9th, 10th grounds of appeal in that there is no material contradiction in respect of the respondent's evidence, and that the evaluation of the evidence was fairly conducted, all witnesses were firm that the allocation was not done to the respondent's but to his father, and the Respondent is the succeeding owner. Defending the District Land & Housing Tribunal's decision to ignore the authorities cited by the appellant, he states that the same were simply found to be irrelevant and distinguishable. It is his view that the doctrine of precedent requires that the lower courts be bound by the decisions of the higher courts, but under these circumstances, the precedents cited by the appellant were seen by the District Land & Housing Tribunal to be irrelevant that is why the tribunal did not consider them.

Arguing on ground 11, counsel for the respondent is of the view that the Appellant misdirected himself in the proper understanding of the words 'occupying' and 'owning' when the chairman of the District Land & Housing Tribunal confirmed that it is the respondent who owned the land, and not simply using or occupying it and that finding is not erroneous but rather correct according to the evidence on record.

On the last ground of appeal, the counsel affirmed that all the documents filed in the original file of the tribunal including pleadings and tendered exhibits formed part of the records of the court, and he was certain that if scrutinized, even the assessor's opinion will also be found in it that is why they are considered in the decision of the chairman.

He thus prayed for the appeal to be dismissed with cost for being meritless.

Rejoining, the Appellant reiterated what he submitted previously adding no value to his previous submission, so I find no need to reproduce the same.

Having read the submissions from both parties and going through the records of the subordinate tribunals, I am inclined to consider the issue for determination before this court which is whether this appeal is maintainable, and particularly whether the trial tribunal had jurisdiction to entertain the

dispute as it did when it did. In my view, all of the grounds of appeal can be clustered into two, those challenging legal procedural issues, and the ones challenging the evidence and its admission/evaluation.

True to the spirit of efficiency, prudence dictates that this court address itself to the legal procedural aspects of the grounds of appeal first. I thus start with the first ground of appeal, which in my view if it is determined in the affirmative, then it shall dispose of the matter with no recourse to any other ground of appeal. The contention on this ground is that the Ward Tribunal had no jurisdiction when it was determining this matter. On the other hand, the Respondent vehemently refutes this contention reasoning that by the time the amendment to the law stripped the ward tribunal of its jurisdiction to determine land disputes, it had already heard the matter and was at the stage of issuing the decision, and as such, it was not without the requisite power to determine the matter as it did.

To put matters in perspective, I have to reproduce **section 45(4)** of the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021 which amends **section 13** of the Land Disputes Courts Act, Cap 216 R.E 2016. The section provides:

*"Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding **affecting the title to or any interest in land unless the ward tribunal has certified** that it has failed to settle the matter amicably.:*

Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal." (Emphasis is mine)

I have perused the records and considered the submission as argued by the Counsel for both parties and found that this matter was disposed of on October 18, 2021. At that moment, section 13 of the Land Disputes Courts Act, Cap 216 Revised Edition 2019 had already been amended by the Written Laws Miscellaneous Amendment Act, Act No. 3 of 2021. In my considered view, this is the momentous time that determines the cut-off date.

At that time, the said amendment had come into force, by the published Government Notice No. 41 of 2021, which became operational on October 11, 2021, meaning essentially, this matter was amongst the matters that

were now supposed to only undergo a mediation process, before being heard at the District Land & Housing Tribunal.

Considering the retroactive effect of the said provision, which is a procedural law, the trial tribunal had no power to deliver judgment on October 18, 2021.

See the decision of this court in **Yusuph Khamisi Hamza vs Juma Ali Abdalla**, Civil Appeal No. 25 of 2020 (unreported). Also see the case of **Yakobo Gobre vs Raphael Daniel**, Misc Land Case No 24 of 2022, as well as **Lala Wino vs Karatu District Council**, Civil Application No. 132/02/2018.

It is a settled principle of law that when an amendment of the law affects a procedural step or matter, it acts retrospectively unless a good reason to the contrary is shown. In the case of **Municipality of Mombasa vs Nyali Limited**, [1963] E.A. 371 the erstwhile East African Court of Appeal held in authority:

"Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation. In seeking to ascertain the intention behind the legislation the Courts are guided by certain rules of construction. One of these rules is that if the

legislation affects substantive rights, it will not be construed to have a retrospective operation unless a clear intention to that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary. But in the last resort, it is the intention behind the legislation which has to be ascertained and a rule of construction is only one of the factors to which regard must be had in order to ascertain that intention. "

I have no qualms in agreeing with the Appellant's contention that the amendments being of a procedural nature, had affected Land Case No. 13 of 2021. The question of whether such an amendment would affect a case like the one at hand, which had already been heard at the moment when the Act became operational. It is the very issue that the Respondent's counsel tried to assail insisting that while the decision was made on October 11, 2021, the actual decision was delivered to the parties in dispute on October 18, 2021, and to him that should have made a difference in the retroactivity of the amended statute. This pertinent question was grappled with when the Court of Appeal in the case of **Lala Wino vs Karatu District Council** (supra), quoting with approval the holding of the decision in

Benbros Motors Tanganyika Ltd vs Ramanlal Haribhai Patel [1967]

HCD No 435 had the following to say:

"When a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act."

The above authorities settle the position of the law in our jurisdiction. It entails that the Act operates retrospectively irrespective of whether the action commenced before, at, or after passing the Act. The law applied to the dispute pending before the court when it became operational, whether it had come into the knowledge of the trial tribunal or not; as held by his Lordship Massara, J. in **Yakobo Gobre vs Raphael Daniel** (supra), a view that I wholly subscribe to.

Subsequently, I would agree further with Counsel Safari that since the determination of the matter at the Ward Tribunal was legally wrong and improper for want of jurisdiction, and the issue of jurisdiction when realized, is fundamental and can be raised at any time, even at the appellate stage

as it touches on the very root of any matter. See **Gem and Rock Ventures vs Yona Hamis Mvutah**, Civil Reference No. 1 of 2010 (unreported), **Baha Matle vs Yasenta Ungeni**, Misc. Land case Appeal No. 25 of 2020, as well as **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters** [2006] TLR 70.


Having discussed the above ground, I find the trial tribunal had no jurisdiction to entertain and determine the dispute, anything done thereof remains to be inconsequential with no value. The 1st ground of appeal is with merits. Naturally, it becomes illogical to proceed with the discussion of the remaining 11 grounds of appeal since they will serve no purpose.

Consequently, I find the appeal to be of merit. Since the trial tribunal had no jurisdiction to entertain the dispute, the decision of the appellate tribunal cannot be left to stand, as it stemmed from a nullity. I hereby invoke the revisional powers conferred upon me by section 43(1)(b) of the Land Disputes Courts Act to quash and set aside the proceedings of both the appellate tribunal and those of the trial tribunal, and the resultant decisions and decrees. If parties to the dispute are still keen on pursuing their rights over the suit land, they are at liberty to refer the dispute to a competent forum with jurisdiction to determine the dispute.

No order to costs since the brunt of the outcome herein is not to be borne by any of the parties.


Order accordingly.

DATED at **ARUSHA** on the 22nd of September 2023.



A.Z. BADE
JUDGE
22/09/2023

Judgment Delivered on **22nd September 2023** before the parties / their representatives in chambers



A. Z. BADE
JUDGE
22/09/2023