

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO. 91 OF 2022

(Originating from the District Land and Housing Tribunal for Singida at Singida in Land
Application No. 25 of 2016)

YAHAYA MASOUDI SINGU.....APPELLANT

VERSUS

MARK THADEY MALLYA.....1ST RESPONDENT

GENEROSE KAMARA.....2ND RESPONDENT

AMRI MANENGERO.....3RD RESPONDENT

JUDGEMENT

Date of Last Order: 27/06/2023

Date of Judgment: 05/10/2023

A. J. MAMBI, J.

This judgment emanates from an appeal at the instance of the appellant, **YAHAYA MASOUDI SINGU**. The appellant in this case having lost in his suit before the District Land and Housing Tribunal for Singida at Singida (*the DLHT*), is appealing before this Court basing on three grounds of appeal, to wit: -

- 1. That, the trial tribunal erred in law and in fact to reach to unjust decision by ruling out that tribunal has no jurisdiction without regarding that the same had already disposed in the preliminary point of objection.*

- 2. That, the trial tribunal erred in law to decide that it lacks jurisdiction to entertain the matter without regarding that the matter centered on the interest in land ownership of the suit premise.*
- 3. That, the trial tribunal erred in law and in fact to dismiss the application and rule out that the matter ought to follow the chain of normal courts without regarding that there was no order of any court which led the execution.*

During hearing, the appellant appeared in person and unrepresented whereas the respondents had the legal services of Mr. Peter Ndimbo.

Given chance to submit on his grounds of appeal, the appellant stated that he had nothing to add and that he was relying on his grounds of appeal.

Responding to the appellant submissions, Mr. Ndimbo for the respondents contended that this appeal is rooted from the Criminal Case No. 157 of 2013. The learned counsel submitted that the trial tribunal was right in disposing the matter at the stage of preliminary objection as the dispute before it involved an issue of whether a transfer of a suit land through sale was proper. He averred that the dispute was not on ownership but on the sale of the suit land. Mr. Ndimbo argued that a sale of the suit land was done in pursuance of the order of execution of the primary court that is exhibit D2.

In his rejoinder, the appellant contended that he owed the 1st respondent a sum of money. He stated that he deposited the money owed to the 1st respondent's account before their contract expired. The appellant finalized his brief submission by stating that the 1st respondent breached their contract by selling his house and at the same time taking his money.

I have considerably gone through the grounds of appeal, submissions by the parties and the records. The records especially the judgment of the DLHT in '*Maombi Ya Ardhi Na. 25/2016*' dated 04/10/2022 show that the reason of the said decision was that the DLHT lacked appellate and revisionary powers on decisions of the Primary and District Courts. That being the case, I find that the main issue before this Court is whether the DLHT was right in its decision in holding that it lacked appellate and revisionary powers on the decisions made by the ordinary courts. The issue raised in this matter calls upon this Court to find out whether the District Land and Housing Tribunal had jurisdiction or not.

Going through the amended application that was filed at the DLHT, the appellant (then applicant) in the said suit was claiming ownership of the landed property on Plot No. 35 Block "BB" (suit land) located at Kibaoni Area within Singida Municipality. He alleged that the said suit land was used as a security to the 1st respondent in relation to their timber business. The appellant (then applicant) further alleged that the 2nd respondent without consent of the appellant or any order from the court disposed the suit land to the 3rd respondent. The appellant complained that the said disposition of the suit land was conducted illegally without his knowledge.

However, under the proceedings of the DLHT the evidence from both sides, that is from the appellant (then applicant) and the defense (the respondents herein) together with their exhibits, **exhibit P1** (a CRDB bank receipt of 30th July, 2015), **exhibit P2** (a deed of settlement between the applicant and the 1st respondent dated 3rd March 2015), **exhibit D1** (a judgment of Singida Urban Primary Court in Criminal Case No. 157/2013 dated 24/07/2014), **exhibit D2** (an order of Singida Urban Primary Court dated 15/10/2014) and **exhibit D3** (a ruling of Singida District Court in Misc. Criminal Application No. 5/2014 dated 02/09/2015)

are clear that the appellant was criminally charged by the 1st respondent at Singida Urban Primary Court in Criminal Case No. 157/2013 for the offence of obtaining money (Tshs 8,143,500/=) by false pretense c/s 304 of the Penal Code, Cap 16 [R: E 2002]. The evidence further reveal that the appellant was found guilty and sentenced to serve a twelve months imprisonment and pay a fine of Tsh 200,000/=. The primary court further ordered appellant to pay the 1st respondent Tsh 8,143,500/=. It appears that the appellant failed to pay the 1st respondent Tsh 8,143,500/= that was ordered by the trial Primary Court. This resulted to the 1st respondent to apply for execution at the trial Primary Court. It is also on the records that when the trial Court was in the process of attaching the suit land in execution of its order, the appellant lodged an application for revision of the trial Court proceedings and decision in Criminal Case No. 157/2013 at the District Court of Singida vide Misc. Criminal Application No. 5/2014.

The records further indicate that in the course of hearing of such application for revision, the appellant and the 1st respondent reached an amicable solution vide a deed of settlement, **exhibit P2**. The records show that under the deed of settlement, the appellant agreed to pay the sum owed to the 1st respondent, that is Tsh 8,140,000/= in four months from 1st April 2015 to 31st July 2015. The parties further covenanted that in case of default to realize the debt due, the suit land shall be disposed. It was upon the provisions of the said deed of settlement, the District Court dismissed the case that was before it, that is Misc. Criminal Application No. 5/2014 to enable parties to settle the matter.

However, the appellant failed to honour the provisions of the said deed of settlement as he managed to only pay Tsh. 3,000,000/=. This made the 1st respondent to seek for execution of the terms at the trial Primary Court. The primary court forthwith ordered for attachment and sale of the

suit land. It is also on the records that, the suit land was thereafter auctioned on 07/05/2016. It would appear that this was the root cause of the filing of Land Application No. 25 of 2016 by the appellant at the DLHT.

Now from the facts and evidence briefly elaborated above it is clear that the appellant's claims at the DLTH stems from criminal charges that were determined by the Singida Urban Primary Court and later on by the District Court of Singida. That is, instead of appealing or seeking a revision against the decision of the District Court, the appellant decided to file a fresh land case no. 25 of 2016 at the DLHT challenging the orders of the Singida Urban Primary Court. The question to be asked is that, was the appellant legally right to lodge those claims at the DLHT? The answer is obvious **NO**. This is because, being dissatisfied by the decision or order of the District Court, the appellant was required to appeal or file an application for revision at this Court. The High Court of Tanzania is the court which is vested with powers to determine all matters from the courts subordinate to it. The powers of the High Court are stipulated under S.43 and 44 of the Magistrates Courts Act, Cap 11 [R: E 2019].

In this regard, it was improper for the appellant to file his claim at the DLHT. This means that since the DLHT had no jurisdiction to entertain the matter before it, the appellant appealed at this court against a non-existed decision. This is as good as saying there is no proper appeal before this Court.

I wish to refer the decision of the court in ***Joseph Ntongwisanguue another V. Principal Secretary Ministry of finance & another Civil Reference No.10 of 2005*** (unreported) where it was held that:

"in situation where an appeal or application proceeds to a hearing on merit and in such hearing the appeal or application

is found to be not only incompetent but also lacking in merit, it must be dismissed or struck out. The rationale is simple. Experience shows that the litigations if not controlled by the court, may unnecessarily take a very long period and deny a party in the litigation enjoyment of rights granted by the court.

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009, CAT (unreported) where the court held that:

"this Court always first makes a definite finding on whether or not the matter before it for determination is competently before it. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."

In light of the foregoing discussions, this Court finds that the District Land and Housing Tribunal for Singida rightly made its decision that it lacked both appellate and revisionary powers on decisions made from ordinary courts. That said, I have no reason to fault the decision made by the District Land and Housing Tribunal for Singida rather than upholding it. In the circumstance, I find that this appeal lacks merit and is hereby dismissed in its entirety. No orders as to costs.

Order accordingly.



A. J. MAMBI

JUDGE

05/10/2023

Judgment delivered in Chambers this 5th day of October, 2023 in presence of the appellant and in absence of the respondents.



A. J. MAMBI

JUDGE

05/10/2023

Right of appeal explained.



A. J. MAMBI

JUDGE

05/10/2023