

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB-REGISTRY
AT MBEYA
LAND APPEAL NO. 22 OF 2022**

(Arising from the District Land and Housing Tribunal for Rungwe at Tukuyu in Land Appeal No. 24 of 2021 Originated in Luteba Ward Tribunal in Civil Case No. 1 of 2021)

SAMSON N. MWAMBWENE.....APPELLANT

VERSUS

BUPE KINGDOM KIBONA.....RESPONDENT

JUDGMENT

*Date of Last Order: 06/09/2023
Date of Judgement: 07/12/2023*

NDUNGURU, J.

The appellant SAMSON N. MWAMBWENE and respondent BUPE KINGDOM KIBONA are husband and wife respectively. The matter originated from Luteba Ward Tribunal where the appellant instituted a civil case (SHAURI LA MADAI as it was titled) claiming that the respondent had failed to follow instructions which he gave her. The appellant alleged before the Ward Tribunal that he owned two houses, one being complete and the other incomplete and five farms. That when

he married a second wife he instructed the respondent to live in a completed house and that the unfinished one should be for a new wife but the respondent has failed to obey instead she started claiming all of the properties to be her.

On her part, the respondent told the Ward Tribunal that she cannot let a new wife enjoy the her sweat. She claimed that all properties she acquired with the appellant should remain their joint property with their children and that the new wife should struggle and acquire her own properties.

Having heard both parties the Ward Tribunal found that the respondent was right, so it made the decision that the properties should remain jointly owned by the appellant and the respondent also that the said new wife has no right over those properties.

Dissatisfied the appellant appealed to the District Land and Housing Tribunal for Rungwe. However, before it heard the appeal the District Tribunal considered the circumstances revolving the matter and came out of the opinion that it was not land dispute. It called upon the appellant as he was the only party who appeared for him to address the Tribunal. At the end the District Tribunal came to the conclusion that it has no jurisdiction over the matter as the dispute between the parties

sound like breach of agreement than being a land dispute. It thus quashed the appeal.

Aggrieved, the appellant filled the instant appeal faulting the decision of the District Tribunal on two grounds that:

1. That the Hon. Chairperson erred in law and fact to hold that the matter at the Ward Tribunal based on agreement and not land matters.
2. That the chairperson erred in law and fact when held that the Tribunal on its position, *suo moto*, and dismissed the appeal instead of nullifying the whole proceedings of Luteba Ward Tribunal.

At the hearing the appellant was unrepresented and it was heard ex-parte as the respondent had never entered appearance. Up on the prayer by the appellant, this Court allowed the appeal to be argued by way of written submission.

The appellant argued the 1st ground of appeal that the District Tribunal was supposed to determine the appeal as per the requirement of section 35 (1) (a-d) of the Land Disputes Courts Act, Cap. 216 2019 and not otherwise.

In that complaint the issue for determination is whether the District Tribunal erred when it decided that the matter at the Ward Tribunal was not a land dispute. Unfortunately, I have not found any statute which specifically defines 'land dispute'. However, in my view for a dispute to be referred as a 'land dispute' it should be a complaint concerning land. For example, section 3 of the Land Disputes Courts Act, Cap 216 RE 2019 provides that:

*3.-(1) Subject to section 167 of the Land Act and section 62 of the Village Land Act, **every dispute or complaint concerning land** shall be instituted in the Court having jurisdiction to determine land disputes in a given area.*

In his work, John Bruce, titled; **LAND DISPUTES AND LAND CONFLICTS PROPERTY RIGHTS AND RESOURCE GOVERNANCE BRIEFING PAPER #12 Revised March 2013**; defines 'land dispute' to mean:

"Conflicting claims to rights in land by two or more parties, focused on a particular piece of land, which can be addressed within the existing legal framework."

Looking at the case at hand, the appellant instituted to the Ward Tribunal a complaint which was titled as "SHAURI LA MADAI" which literally means "Civil Case". In explaining his complaint, the appellant told the Ward Tribunal that his wife has dishonoured his instruction which he gave her after marrying another wife. The appellant did not point any conflict between him and his wife over ownership or right to land.

In the circumstance the District Tribunal was correct to hold that the matter was not a land dispute. The ground of appeal thus, lacks merit.

On the 2nd ground he submitted that the District Tribunal would have found the proceedings of the Ward Tribunal to be a nullity and proceed to nullify them since had no jurisdiction to entertain the matter on agreement as the land dispute. He however prayed that this Court being the second appellate court has duty to reconsider the evidence and rich to its own conclusion. He concluded by praying for the appeal to be allowed with costs.

In this complaint, the appellant meant that since the District Tribunal had decided that the Ward Tribunal heard a matter which did not involve land dispute it would have nullified its proceedings and the

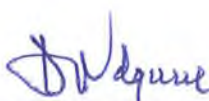
decision. The question to be asked is whether Ward Tribunals have only jurisdiction to entertain land disputes. The answer is in negative. This is because, apart from the jurisdiction or powers vested to the Ward Tribunals under the Land Disputes Courts Act, Cap. 216 RE 2019, The Land Act, Cap. 113 R.E 2019 and the Village Land Act, Cap 114 R.E 2019 Ward Tribunals have jurisdiction and powers vested to them under the Ward Tribunal Act, 1985. For example, section 9 and the schedule to the Act, i.e the Ward Tribunal Act, gives power to entertain any Civil Matters if a party refers them to it with the view of reconciliation.

That being the position, I do not see if it would have been proper for the District Tribunal after finding that it has no jurisdiction to entertain the appeal which did not emanate from land dispute to proceed nullifying the proceedings and decision of the Ward Tribunal. In the premises I find the complaint in the 2nd ground of appeal want of merit.

In the end, I dismiss the entire appeal. No order as to costs.

It is so ordered.




D.B. NDUNGURU,
JUDGE
07/12/2023