

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF MTWARA
AT MTWARA**

MISC. LAND APPEAL NO. 2 OF 2022

(Arising from the ruling and order of Misc. Land Application No. 10 of 2022 of
Liwale District Land and Housing Tribunal dated 19th July 2022.)

HEMEDI MSHAMU MAKWALILO ----- APPLICANT

VERSUS

KHALIFA MOHAMEDI Mtilila ----- RESPONDENT

JUDGMENT

Date of last Order: 17.08.2023

Date of Judgment: 17.11.2023

Ebrahim, J.

This appeal, stems from the decision of the District Land and Housing Tribunal for Liwale at Liwale in Misc. Land Application No. 10 of 2022 dated 19th July 2022 before Hon. Mjanja, Chairman. The material factual background to the dispute are briefly as follows; Khalifa Mohamedi Mtilila, the respondent herein, instituted a case at the

Ward Tribunal of Liwale suing Hemedi Mshamu Mkwailo, the appellant and Saidi Ally Uliya who is not a party to this appeal for selling the farm of 12 acres of the late Mpitage. The Liwale Ward Tribunal in Case No 66 of 2019 decided the matter in favour of the respondent. The decision was neither challenged nor quashed by any competent court. The respondent lodged an execution proceeding before the District Land and Housing Tribunal for Liwale. The Chairman proceeded to appoint Yono Auction Mart to execute the trial tribunal's decision. It is from that decision that the appellant was dissatisfied hence he lodged the instant appeal raising three grounds of appeal as follows: -

1. Kwamba Baraza la Ardhi na Nyumba la Wilaya ya Liwale lililopo Liwale "B" lilijiongoza vibaya kwenye Sheria na Maamuzi yake kwa kuamua kuwa eneo lenye mgogoro ni mali ya Mrufaniwa kwa kuzingatia mkataba ambao umeghushiwa ambapo Mrufaniwa alighushi ameuziwa ekari 45 za shamba la Mikorosho badala ya ekari 6 za shamba la Mikorosho zilizouzwa kwenye Mkataba;

2. Kwamba Baraza la Ardhi na Nyumba lilijiongoza vibaya kwenye Sheria na Maamuzi kwa kuamua shauri dhidi ya Mrufani bila kuangalia ushahidi wa Mrufani ambao ulitolewa mbele ya Baraza ambao unaonesha shamba ni mali yake Mrufani;
3. Kwamba Baraza la Ardhi na Nyumba lilijiongoza vibaya kwenye Sheria kwa kutoangalia uzito wa ushahidi uliotolewa na Mrufaniwa.

The appellant prayed for the following orders: -

- a. That the ruling and order of Liwale District Land Tribunal be set aside;
- b. That the costs of this Appeal be provided for;
- c. Any other order(s) this honorable court deems just and equitable to grant.

When the appeal was called for hearing, both parties appeared in person having no legal representation. Both parties prayed for this court to adopt the grounds of appeal and reply to the grounds of appeal respectively. The appellant valiantly contended that the respondent sold his land without his consent.

In opposing, the respondent contended that he did not sell the land to Mashujaa or Chikojo. He added that he sold the land of the late Ally Abdallah Mpitage which was 45 acres. He added that he was the administrator.

In brief rejoinder, he prayed for the court to visit locus in quo.

I have carefully examined the grounds of appeal, the reply thereto and the record of District Land and Housing Tribunal for Liwale and noted that first of all the matter before the District Land and Housing Tribunal for Liwale related to execution of the trial Ward Tribunal's decision.

In addressing the grounds of appeal as presented by the appellant, I shall address the first, second and third grounds of appeal together because they are intertwined.

It appears to me that the appellant is specifically appealing against the decision of the Misc. Land Application No. 10 of 2022 of Liwale District Land and Housing Tribunal which was delivered on 19.07.2022 by Hon. Mjanja, Chairman. The law requires any party who is aggrieved by the decision of the lower tribunal or court to appeal to

the upper Court. In accordance with **Section 16 (3) of the Land Dispute Courts Act [Cap. 216 R.E 2019]**, provide that: -

"(3) Where a party to the dispute fails to comply with the order of the Ward Tribunal under subsection (1), the Ward Tribunal shall refer the matter to the District Land and Housing Tribunal for enforcement."

The above section requires the decision of the trial Ward Tribunal to be executed or enforced at the District Land and Housing Tribunal.

When going through the tribunal records, I have discovered that **Application No. 66 of 2019** was lodged at Liwale Ward Tribunal, whereas the trial tribunal determined the said application and the appellant lost the case. Thereafter, the respondent proceeded to execute the trial tribunal's decision at the District Land and Housing Tribunal for Liwale as required by the law, since the Ward Tribunal had no power to execute its own decision. The decree in the District Land and Housing Tribunal in the Misc. Land Application No. 10 of 2022, page 4 paragraph (i) of the drawn order provides that: -

"Maombi haya ya utekelezaji Hukumu yanakubaliwa kwa mujibu wa kanuni namba, 23 (3) ya sheria ya the Land Dispute Courts (The

District Land and Housing Tribunal) Regulations 2003, ambapo mdaiwa unamriwa kutekelezu tuzo ya baraza la kata Liwale Mjini kwa kumlipa mara moja mshinda tuzo kiasi cha Tshs. 6,000,000/=. Na pia kushindwa kwako kutekeleza amri hii kwa hiari utawajibika kulipa gharama za shauri hili pamoja na gharama za dalali."

The District Land and Housing Tribunal appointed an Auction Mart to execute the trial tribunal's decision.

The three grounds of appeal raised are new grounds which were not raised at the execution tribunal.

Misc. Land Application No. 10 of 2022 was filed for the execution purposes only. Now, the appellant has brought grounds of appeal against the trial tribunal decision while the appellant had that avenue to challenge such decision by filing an appeal at the District Land and Housing Tribunal.

As a matter of procedural principle and law, facts that were not canvassed or raised at the lower courts cannot be raised as grounds of appeal at a higher court. Certainly, for the court to be clothed with its appellate powers, the matter in dispute should first go through lower court or tribunal. The Court of Appeal of Tanzania

in the case of **Haji Seif vs. Republic**, Criminal Appeal No. 66 of 2007

held that: -

*"Since in our case that was not done, this Court lacks jurisdiction to entertain that ground of appeal. We therefore, **do not find it proper to entertain that new ground of appeal which was raised for the first time** before us." [Emphasis added].*

Applying the above principle in the instant appeal, it is vivid that the three grounds are completely grounds of appeal which were supposed to emanate from an appeal. Therefore, I am not in a position to entertain new grounds of appeal which are raised in this court for the first time.

In the upshot, I find this appeal with no merit. Therefore, I proceed to dismiss the appeal with costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim".

R.A Ebrahim
Judge.

17.11.2023
Mtwara.