

IN THE HIGH COURT OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

LAND APPEAL NO. 72 OF 2023

(Arising from the District Land and Housing Tribunal for Mwanza in Land Application

No. 147 of 2020)

HASSAN AHMED KASUKU.....APPELLANT

VERSUS

RAMADHANI YAHYA.....RESPONDENT

JUDGMENT

2nd & 18th April, 2024

KAMANA, J.

Yahya Ramadhani, the respondent, was the applicant in the District Land and Housing Tribunal for Mwanza (DLHT) in Land Application No. 147 of 2020, the decision of which has led to this appeal. The application involved a dispute over ownership of a piece of land described as Plot No. 222, Block "B", LO No. 422174, Title No. 36686, Nyasaka, Ilemela Municipality in Mwanza.

In the said application, the respondent prayed for the following reliefs:

- 1. Declaratory order that he is a lawful owner of the disputed land.*

- 2. Eviction order against the appellant.*
- 3. An order to demolish the structures, buildings, and any property in the disputed land.*
- 4. General damages.*
- 5. Costs.*
- 6. Any other relief(s) as the DLHT may deem fit to grant.*

The appellant challenged the application preferred by the respondent. He asserted that he has been the lawful owner of the disputed land since 1992 when he purchased the same from Yombo Misalaba. To strengthen his case, the appellant fielded Yombo Misalaba as a witness and tendered the purchase agreement which was admitted as an exhibit.

In its judgment, the DLHT was satisfied that the respondent is the lawful owner of the disputed property due to the following reasons. One, the respondent was the one who was registered as the owner of the disputed land through the certificate of occupancy issued by land authorities. Two, the appellant did not prove that the issuance of the certificate of occupancy by land authorities was marred with fraud or any other illegality. Three, the sale agreement between Yombo Misalaba and the appellant provides nothing that describes the suit property.

Aggrieved by such a decision, the appellant preferred this appeal for the following reasons:

- 1. That the DLHT erred in law and fact by entertaining the matter without having jurisdiction.*
- 2. That the DLHT erred in law and fact by pronouncing judgment in favour of the applicant while there was a non-joinder of the necessary party.*
- 3. That the DLHT erred in law and fact by entertaining and deciding the matter without considering the evidence adduced by the appellant on issues of land compensation regarding Plot No. 222.*
- 4. That the DLHT erred in law and fact by considering that the appellant received Tshs.706,678/- as the total amount of compensation while it was not the same amount for compensation.*
- 5. That the DLHT erred in law and fact in deciding the dispute and reaching a final decision without assessing and analyzing the assessors' opinions and the evidence adduced by the appellant.*
- 6. That the DLHT erred in law and fact by failing to consider the long possession of the suit land by the appellant since 22nd*

November, 1992 and reallocation without any notice and any compensation.

At the hearing, the appellant appeared in person and the respondent was represented by Mr. Innocent Kisigiro, learned Counsel. The appeal was argued by way of written submissions.

Submitting in support of the first ground, the appellant contended that the DLHT had no jurisdiction to entertain the application without the dispute being taken first to the Ward Tribunal for mediation. In strengthening his argument, he relied on the provisions of section 13(4) of the Land Disputes Courts Act, Cap. 216 [RE. 2019] (LDCA) as amended by the Written Laws (Miscellaneous Amendment) (No. 3) Act of 2021 which stipulates the following:

“(4) 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.’

Replying, Mr. Kisigiro dismissed the ground as baseless as such requirement came into operation on 11th October, 2021 while the application was instituted on 12th June, 2020. In that case, he held the view that the requirements that the dispute must be taken to the Ward Tribunal did not affect the jurisdiction of the DLHT.

I have gone through the records and found that the application that led to this appeal was, as correctly stated by Mr. Kisigiro, instituted in the DLHT on 12th June, 2020. I further had time to peruse the Written Laws (Miscellaneous Amendments) (No.3) Act, 2021, and found that the said Act was published in the Government Gazette on 11th October, 2021. That being the case, the issue that invites my determination is whether subsection (4) of section 13 of the LDCA as introduced by the Written Laws (Miscellaneous Amendments) (No.3) Act, 2021 has retrospective effect.

As a matter of principle, an Act of Parliament is given a retrospective effect unless such an Act creates rights and liabilities which did not exist before the enactment. In other words, an Act of Parliament has retrospectivity if it relates to procedural issues unless it expressly negates such retrospectivity. In the case of **Felix H. Masha and another v. Exim Bank Tanzania Limited**, Civil Reference No. 12 of 2017-CAT (Unreported), the Court of Appeal emphasized the position as follows:

'We are mindful of the position of the law that when an amendment of the law affects a procedural step or matter only, it acts retrospectively, unless good reason to the contrary is shown.'

The position was also accentuated in the case of **the Director of Public Prosecutions v, Jackson Sifael Mtares & three Others**, Criminal Appeal No. 2 of 2018-CAT (Unreported), where it was held that:

'Normally, it may not be made to apply retrospectively where the said legislation affects the substantive rights of the "potential victims of that new law. On the other hand, however, if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.'

From the cited authorities, it is clear as crystal that procedural laws when enacted have a retrospective effect. The underlying factor for such retrospection is that procedural laws are there to ensure a smooth and efficient dispensation of justice.

In his submission, Mr. Kisigiro argued that when subsection (4) of section 13 of the LDCA was enacted, the application was already instituted in the DLHT and hence the jurisdiction of the Tribunal was not affected. This was vehemently opposed by the appellant. The contention of the

rivals led me to ask myself whether there are limits as to when the retrospection of the procedural law ends.

Trite law is that the retrospection of procedural law covers all matters that are instituted after the coming into force of the procedural law regardless of the fact that the factors that led to the institution of such matters took place before the enactment of such laws. Further, they cover matters that were pending when the procedural law came into operation. This position was accentuated by the Court of Appeal in the case of **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 in which the Court quoted with approval the except in the book authored by A. B Kafaltiya titled *"Interpretation of Statutes"; 2008 Edition, Universal Law Publishing Co., New Delhi - India*, at page 237 where it states:

'No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues. When the legislature alters the existing mode of procedure, the litigant can only proceed according to the altered mode. It is well settled principle that 'alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.' The

rule that 'retrospective effect is not to be given to laws' does not apply to statutes which only alter the form of procedure or the admissibility of evidence. Thus amendments in the civil or criminal trial procedures, law of evidence and limitation etc; where they are merely the matters of procedure, will apply even to pending cases. Procedural amendments to a law, in the absence of anything contrary, are retrospective in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which action may be based accrued on an anterior date. Where a procedural statute is passed for the purpose of supplying an omission in a former statute or for explaining a former statute, the subsequent statute relates back to the time when the prior statute was passed. All procedural laws are retrospective, unless the legislature expressly says they are not.'

That being the position, I am of the considered view that the DLHT when entertaining Land Application No. 147 of 2020 had no jurisdiction simply on the reason that the amendment of the LDCA had a retrospective effect. Under normal circumstances, I expected that Mr. Kisigiro would address the Court on whether there are reasons to depart from the

principle that procedural laws have retrospective effect. Since no reasons were furnished by Mr. Kisigiro, I sustain the first ground.

Since I have decided that the DLHT did not have jurisdiction when entertaining the application that led to this appeal, I see no reason to deal with other grounds.

Consequently, the proceedings, ruling and orders of the DLHT are quashed and set aside. Any party that wishes to rerun the battle is at liberty to do so in a proper forum. Each party is to bear its costs.

Right To Appeal Explained.

DATED at **MWANZA** this 18th day of April, 2024.



KS KAMANA

JUDGE