

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB-REGISTRY**

**MISCELLANEOUS LAND APPEAL NO. 17 OF 2023**

**(arising from Appeal No. 65 of 2022 of the District Land and Housing Tribunal of Arusha  
which arise from Oloiren Ward Tribunal complaint No. 18 of 2020)**

**JULIUS MASHARUBU..... APPLICANT**

**VERSUS**

**NESERIAN EDWARD ..... RESPONDENT**

**JUDGMENT**

**2/05/2024 & 23/05/2024**

**NDUMBARO, J**

The appellant aggrieved with the decision of Oloiren Ward Tribunal Arusha Application No. 18 of 2020 and Land and Housing Tribunal Arusha and Appeal No. 65 of 2022 both in favour of the respondent hence appealed to this court and raised 4 grounds of appeal; -

1. Ward and Appellant Tribunal erred in law and fact dealing with the matter with no pecuniary jurisdiction.

2. Ward and Appellant Tribunal erred in law and fact when declaring respondent herein the lawful owner of the suit land while she has no locus stand suing as representative of her late husband
3. Ward and Appellant Tribunal erred in law and fact when dealing with the matter which is hopelessly time-barred
4. Ward and Appellant Tribunal erred in law and fact when failed to consider the objection.

Both parties were with no representation and chose to argue the case by way of written submission.

The appellant claims to own suit land excavated water and developed while the respondent also claims the land belongs to her, co-owned by her late husband.

The appellant chooses not to argue on 2<sup>nd</sup> and 3<sup>rd</sup> grounds. On the first ground, the appellant raised the objection that the Ward and Appellant Tribunal dealt with the matter with no pecuniary jurisdiction. The value of the suit land was beyond the 3 million prescribed under section 2 of Land Dispute Court Act No.2 of 2002. Further, the suit land was owned by the respondent's late husband and she was not the administrator of her late husband's estate. The said objection was raised in the trial tribunal as it is

reflected in the tribunal proceedings on page 1, despite that, the jurisdiction can be raised at any stage even in appeal. In support of the argument cited a case of **Tanzania Revenue Authority Vs Tango Transport Company LTD** CAT Arusha Civil Appeal No.84 of 2009 unreported which defines jurisdiction and the case of **Michael Lesen Kweka Vs Korta Co. LTD New Musoma Textile**, with no case number and year of publication, claiming to be held that jurisdiction can be raised even in appeal.

On the 4<sup>th</sup> ground, the appellant was not properly heard by the trial ward tribunal, argued failure to consider the evidence of other parts lender the proceedings nullity. In support of the argument cited the case of **Japhet Anael Temba Vs R. CAT** Criminal Appeal No.78 of 2017 by Sahel J, unreported. Whereby the trial court dealt only with prosecution evidence and failed to weigh defence evidence hence arriving at the wrong decision.

In reply, on the first ground, the respondent argued that no value of land was established to ascertain the jurisdiction of the ward tribunal to that effect.

On the fourth ground argued, the appellant was heard, and the matter was raised in the District Land and Housing Tribunal referring to

page 8 of the appellate tribunal proceedings. Further argued, the appellant chooses not to object to the fact in the appellate tribunal. If the matter was raised in the trial tribunal, cannot be raised in the appellate court. In support of an argument, cite the case of **Joel Mwangambako Vs R** Criminal Appeal No. 519 of 2017 and the case of **Alfan Rajab Mohamed Vs R** Criminal Appeal No. 34 of 2020, which held that matters not raised and decided in the trial court cannot be raised and decided in the appeal court, hence pray that this appeal be dismissed with costs.

In rejoinder, the appellant reiterated his submission in chief. On first ground claimed the value of land to be TZS 24 million while the jurisdiction of the ward tribunal is 3 million, attached is a valuation report made on **3/04/2024** by Arusha District Council in and argued jurisdiction can be raised at any stage. In support of his argument cited the case of **Agrippa Bakari Hosea Vs Tumain Nnko** Land Appeal No. 143 of 2022 HC Tanzilii Page 11 which held that *"let be known that nullity is a nullity and what originates from nullity is a nullity"* and pray that appeal to be allowed with cost.

Considering the argument of both sides on the first ground that the tribunal lacked jurisdiction, I agree with the submission made by the

appellant that jurisdiction can be raised even on appeal. However, the question is, can it be raised at which stage of appeal? can it be raised after the closure of respondent submission?

*In answering those questions, it is my view that the appellant can raise jurisdiction issue at any stage even in appeal, however the right ceases after his submission in chief, because the respondent may not have accorded with chance to reply on the raised jurisdiction issue as it was in this case.*

The appellant raised the jurisdiction issue in the first appellate court but did not tender any evidence as the value of the Suitland to support the raised objection, the appellant attached a valuation report in the second appellate court on his rejoinder. The admission of additional or new evidence is allowed only if it was tendered and the trial court refused to admit it. The position is clear under Order XXXIX Rule 27(1)(a)(b) and (2) of CPC Cap 33 RE 2019 which states;

***1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Court, but if-***

*(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or*

*(b) the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Court may allow such evidence or document to be produced, or the witness to be examined.*

In our case, the valuation report which established the value of land was raised and attached in a rejoinder in the second appellate court. The appellant claims the value of the land at the current market is **24,100,000**. The valuation was made after the respondent closed her case. The respondent was not accorded a chance to respond to the valuation report attached in the rejoinder. The application for conducting valuation was made on **03/04/2024** and it is not clear on the date when

the valuation was made. The submission in chief was made on **4 /03/2024**, the reply was on **25/03/2024** and the rejoinder was on **25/04/2024**. The said evaluation report was not tendered before the trial tribunal.

The appellant wrote a letter requesting a valuation of suit land after the respondent closed her in the second appellate court. It is clear that the role of the appellate court is to reevaluate the evidence and not to receive new evidence. The position is well settled in the case of **Trade Union Congress of Tanzania (TUCTA) Vs Engineering Systems Consultants Ltd; Beda J Amuli t/a Amuli Architects and Construction Management Services Ltd** Civil Appeal No. 51 of 2016 at page 27, whereby three justices of appeal MUGASHA, KOROSSO, and KITUSI held that

***"But we being the first appeal with powers to re-evaluate the evidence step into the shoes of the trial court".***

Based on the above position the valuation of the suit land to determine the jurisdiction of the ward tribunal was supposed to be conducted at that time when the matter was in the ward tribunal. The

matter was before the ward tribunal in 2020, we expected the appellant to tender the valuation report of the suit land before the ward tribunal. The appellate and this court step into the shoes of the trial tribunal to evaluate the evidence tendered.

It is an undisputed fact that, if the valuation is done in a trial tribunal in 2020, the value will not be the same as to now, because the value of land keeps on increasing. I agree with the appellant's argument that the matter of jurisdiction can be raised at any stage, but it was supposed to be raised at the earliest stage on appeal before the respondent closed her case as it was in this case, whereby the valuation report which was considered as a key document to support the matter was attached in the rejoinder. I therefore find this ground with no merit.

On the issue that the respondent has no jurisdiction to claim for the suit land because she is not an administrator of her late husband. trial court proceedings and appellate court judgment show respondent claimed the land belongs to her, that she was a co-owner with the late husband, the suit land was given to them by her mother-in-law before the death of her husband and she used to stay in the suit land till she was chased away by the appellant. Some members of the appellant family one Frank Edward

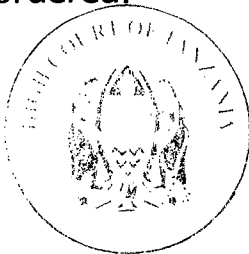


and John Aminiel witnessed in favour of the respondent on that issue. I therefore also find this ground with no merit.

On the 4<sup>th</sup> ground that the appellant was not heard the matter was raised in the appellate tribunal, referring to ward tribunal proceedings, the appellant was accorded with right to be heard, he cross-examined the respondent herein, he tendered his defence, and accorded the right to bring witnesses, one among the witness he brought before the court was Christopher Masharubu. I therefore also find this ground with no merit.

Having determined the grounds of appeal above, this court does not see a reason to fault the decision of the trial tribunal. The appeal before this Court is without merit and is consequently dismissed with costs.

It is so ordered.



*D. D. Ndumbaro*  
**D. D. NDUMBARO**  
**JUDGE**  
**23/05/2024**