

**THE JUDICIARY OF TANZANIA
IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(GEITA SUB REGISTRY)
AT GEITA**

LAND APPEAL NO. 000028307 OF 2023

*(Arising from the Decision of Land Appeal No. 25/From Land Appeal No.
25/2021 in the District Land and Housing Tribunal for Geita at Geita)*

ELIFACE MGONYAAPPELLANT

VERSUS

FAUSTINE MADEBELE.....RESPONDENT

RULING

Date of last Order: 16/02/2024

Date of Ruling: 22/01/2024

MWAKAPEJE, J.:

The Appellant, Eliface Mgonya, is aggrieved by the judgment of the Land and Housing Tribunal of Geita, which was entered in favour of the Respondent, Faustine Madebele. Hearing of the appeal was done orally. The Appellant represented himself, and Yisambi Siwale learned advocate, represented the Respondent.

Before determining the merits or otherwise of the appeal, it is essential that a brief account of the background be narrated.

Sometime between 2014 and 2015, the Appellant and the Respondent agreed for the former to purchase a piece of land from the latter to the tune of Tshs. 4,000,000.00. The Appellant advanced to the Respondent a sum of Tshs. 3,200,000.00. According to their agreement, the remaining sum of Tshs. 800,000.00 was to be paid by the Appellant to the Respondent on the 28th day of February 2015. The Appellant never paid the amount he owed the Respondent as agreed, which compelled the Respondent to apply in the Ward Tribunal to claim the remaining sum. After losing in the Ward Tribunal, the Respondent filed an appeal in the District Land and Housing Tribunal.

The said District Land and Housing Tribunal decided in favour of the Respondent as the rightful owner of the property since the Appellant breached the land purchase agreement. Moreover, it was ruled, among other things, that the Appellant should be refunded the sum of money, i.e. Tshs. 3,200,000.00 he advanced to the Respondent. It is from this decision that the Appellant lodged his appeal with five grounds as follows:

- 1. That the learned Chairman of the District Land and Housing Tribunal erred in law and fact by not considering the fact that*

- he tendered, in the Buhalahala Ward, a contract for the purchase of the said piece of land.*
- 2. That the learned Chairman of the District Land and Housing Tribunal erred in law and fact by not considering and giving weight to the evidence adduced in the Buhalahala Ward Tribunal.*
- 3. That the learned Chairman misdirected himself in ordering that the Respondent should return to the Appellant the sum of Tshs. 3,200,000.00, which the latter advanced to the former without considering The decision of the Ward Tribunal, which required the Appellant to pay the Respondent the unpaid amount of Tshs. 800,000.00.*
- 4. That the Chairman of the District Land and Housing Tribunal erred in law and fact by deciding in favour of the Respondent without considering the nature of the original case by introducing a new fact which was not the basis of the case.*
- 5. That the Chairman of the District Land and Housing Tribunal misdirected himself by deciding in favour of the Respondent while he never tendered any evidence of ownership of the land in dispute.*

When the appeal was called for hearing, the Appellant was the

first to address the Court. In his submission on the first ground of appeal, he stated that the District Land and Housing Tribunal did not consider the evidence of a contract indicating that he purchased the land in dispute, which he tendered in the Buhalahala Ward Tribunal. Because of this, he was of the opinion that the said District Land and Housing Tribunal did not properly perform its functions as provided under sections. 8 and 16 of the Land Disputes Courts Act [Cap. 216 R. E, 2019].

In addition, the Appellant contended that the Chairman of the said District Land and Housing Tribunal failed to inquire much to ascertain the claims of the Respondent in the Ward Tribunal. He, therefore, prayed that the first ground of appeal be allowed.

On the second ground, the Appellant stated that the District Land and Housing Tribunal Chairman did not consider and put weight on the evidence by witnesses in the Ward Tribunal. He faulted the said learned Chairman for failing to consider his documentary evidence tendered in the Ward tribunal. From these shortcomings, he was of the opinion that the District Land and Housing Tribunal failed to perform its duty because it did not inquire into the facts and evidence adduced in the Ward Tribunal, which occasioned injustice on his part. In addition, he stated that

the Respondent in the Ward Tribunal objected to the contract, but the same was considered while it was not part of the grounds of appeal in the District Land and Housing Tribunal.

Concerning the third and fourth grounds of appeal, the Appellant was of the view that the Chairman of the District Land and Housing Tribunal misled himself by ordering him to be refunded Tshs. 3,200,000.00 he advanced to the Respondent without regarding the decision of the Ward Tribunal, which ordered him to pay the Respondent the balance of Tshs. 880,000.00 he owed to him. He emphatically stressed that the issue of breach of contract, which, to his understanding, was valid, was a new fact and was not among the claims by the Respondent.

Moreover, he contended that had the contract between the twosomes been breached, he could have been informed about the same. From these premises, he believed that the learned District Land and Housing Tribunal Chairman erred and misconceived the appeal before him. He, therefore, prayed that these grounds be allowed and he be ordered to pay Respondent Tshs. 800,000.00, which, in essence, was the original claim in the Ward Tribunal.

On his fifth ground of appeal, the Appellant faulted the decision of the Chairman of the District Land and Housing Tribunal on the

question of land ownership. He stated that since he produced evidence in the Ward Tribunal, i.e., the land purchasing contract, and the Respondent produced no evidence of ownership of the land in dispute, the said land belonged to him. He, however, pleaded that this Court should order him to pay the balance he owes the Respondent since the contract was still valid. He, therefore, prayed for this Court to set aside the decision of the District Land and Housing Tribunal and allow his appeal.

On the other hand, in reply, Mr Yisambi Siwale learned advocate for the Respondent in his submission; he argued the first and second; and third and fourth grounds of appeal, respectively. The fifth ground of appeal was argued separately.

On the first and second grounds of appeal, he stated that the appellate Tribunal analysed the Ward Tribunal's decision by evaluating and considering the testimony of the witnesses and documentary evidence tendered therein. To substantiate his point, he noted that the learned Chairperson in his analysis disagreed with their first ground of appeal. However, their second ground was upheld since it was found that the Ward Tribunal did not adequately analyse the case before it. Mr Siwale also pointed out that the District Land and Housing Tribunal considered that the

Respondent was still the land owner in dispute, and he was changing ownership from himself to the Appellant, which process was not completed.

Moreover, he stated that it was clear, as observed by the District Land and Housing Tribunal, that the contract between the Appellant and the Respondent was broken after the former failed to perform its conditions. Accordingly, he was of the opinion that the said Tribunal was justified in deciding that since there was a breach of contract, the Appellant was to be refunded the sum he advanced to the Respondent. In the premises, he prayed for dismissing the first and second grounds of appeal as they are baseless.

Concerning the third and fourth grounds of appeal, he stated that the District Land and Housing Tribunal was correctly directed when it ruled out that the Respondent should return to the Appellant Tshs. 3,200,000 as a sum advanced to the Appellant. He contended that since the matter was about the transfer and ownership of land, which was not completed following the non-performance of the contract by the Appellant, the same was not a new fact. He also stated that in their agreement, the Appellant was required to pay the Respondent the Tshs. 800,000/= by the 28th day of February 2015, which he did not.

Mr Siwale further stated that the Appellant did not honour the contract terms. He stressed that the Appellant was in breach of the same as far as sections 37 and 73 of the Law of Contract Act, Cap 345 (R. E 2022) were concerned. To cement his point, he cited the case of ***Leonard Dominic Rubuye t/a Rubuye Agrochemical Supplies vs Yara Tanzania Limited (Civil Appeal 219 of 2018) [2022] TZCA 419***. He, therefore, prayed that the decision by the District Land Housing Tribunal be sustained and the grounds of appeal be dismissed as they are baseless.

On the fifth ground of appeal, Mr Siwale pointed out that the ownership of the area was not in dispute, and it was clear from the facts that even the Appellant stated that he was buying the said piece of land from the Respondent. He was of the opinion that the fact that there was no document submitted in the Ward Tribunal to prove ownership could not seize away ownership of the same from the Respondent. In the end, he prayed for the dismissal of the fifth ground of appeal as the same was baseless.

In his rejoinder, the Appellant stated that this matter originated in the Ward Tribunal in January 2021 and not March 2021, as the Advocate for the Respondent stated. He, however, had nothing more to say apart from repeating what he stated in his

submission in chief.

In the course of writing the judgment, I noticed that this appeal was filed in Mwanza High Court on 13 October 2023. Upon such revelation, I summoned the parties to address this Court on whether it has jurisdiction to hear and determine the appeal, which was originally filed in the High Court Sub-Registry of Mwanza or otherwise. This was so because none of the parties addressed that the notice of and petition of appeal were filed in the High Court of Tanzania at Mwanza Sub-Registry on the 13th day of October 2023 while this Court became operational on the 01st day of December 2023.

The Appellant was of the view that he filed the same in the High Court at Mwanza Sub-Registration on time. He was told that since the Sub-Registry of the High Court is established in Geita, his appeal would be sent in the same to determine it. He insisted that since they both are High Court Registries, this Court has jurisdiction to determine the appeal. On the other hand, Mr. Yisambi Siwale, a learned advocate for the Respondent, was of the view that it is a procedural irregularity for this Court to deal with this appeal.

As a general principle of law, the question of jurisdiction is not simply one of technicality. The same is fundamental and statutory.

Any trial, appeal or inquiry into a matter by a court with no jurisdiction to entertain the same renders such trial, appeal or inquiry a nullity. It follows, therefore, the principle stated by this Court in the case ***Shyam Thanki and Others v. New Palace Hotel [1972] HCD No. 97*** that:

"All the courts in Tanzania are created by statutes, and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

Now, coming to the issue at hand, the District Land and Housing Tribunal of Geita delivered a judgment on 25/08/2023, which was Land Appeal No. 25 of 2021. The Appellant filed his appeal in the High Court Registry of Mwanza on the 13th day of October 2023. At the time, there was no High Court Registry in Geita until the 01st day of December 2023, established by the Order of the Chief Justice published in the **Government Notice No. 853B dated the 22nd day of November 2023**. The said G.N. reads:

*"THE HIGH COURT (GEITA SUB-REGISTRY
ESTABLISHMENT) ORDER,*

1. *This Order may be cited as the High Court (Geita Sub-Registry Establishment) Order, 2023 and shall come into force on the **01st day of December, 2023.***
2. *There is hereby established the **High Court Sub-Registry of Geita**" [Emphasis Supplied].*

Therefore, there is no doubt that this High Court Sub-Registry came into existence when the same was declared to be operational on the 01st day of December 2023. This simply means anything filed before 1st December 2023 is invalid before this Court as it did not exist.

Looking at the appeal at hand, the same was lodged on the 13th day of October 2023 in both the trial Tribunal and in the High Court Sub-Registry of Mwanza. However, before the determination of the said appeal by the High Court at Mwanza, as it was rightly filed out of the blue, the appeal was brought into this Registry on the 25th day of December 2023 with the title of the High Court Sub-Registry of Mwanza.

From that observation, it is clear to me that since the present appeal was filed on the 13th day of October 2023 in the High Court Sub-Registry of Mwanza, the same cannot be accommodated here as this Court lacks the jurisdiction to entertain it. What I can simply

say at this juncture is that this appeal was brought in this Court as a matter of convenience over the requirements of the law, which is unacceptable.

Therefore, I am afraid I have to disagree with the Appellant, who contends that this Court has jurisdiction to determine the appeal because the High Court Sub-Registry of Mwanza and that of Geita are all High Courts. One has to note that it is common ground that a petition of appeal is always heard and determined where the same was lodged. Despite both being High Courts, it was, therefore, not proper for the appeal to be filed in this Registry while the same appeal was already filed in another Registry of the High Court, i.e. Mwanza.

This Court cannot, therefore, assume the jurisdiction it does not have. As stated by Mr. Yisambi, it is not only unprocedural for this Court to deal with the appeal, but it is also unlawful to proceed with the same. Hence, it is imperative that legal proceedings adhere to proper jurisdictional and procedural requirements to ensure the fair and orderly administration of justice. The Appellant, if he so wishes, may pursue his appeal where he filed his Petition of Appeal, and in this case, the High Court Sub-Registry of Mwanza.

In the event and for the reasons stipulated herein, I rescind from venturing into the present appeal. On the same footing, I proceed to strike it out for want of jurisdiction with no order as to costs, considering the nature of the same.

It is so ordered.

Dated at **GEITA ZONE** this 22nd of February 2024.



G. V. MWAKAPEJE
JUDGE OF THE HIGH COURT