

**IN THE HIGH COURT OF TANZANIA
IN THE SUB-REGISTRY OF GEITA
AT GEITA**

LAND APPEAL NO. 3571 OF 2024

(Originating from the decision of Geita District Land and Housing Tribunal in Land Appeal No. 10 of 2017, Hon Masao-Chairman)

JUMA MRISHO MABIBA..... APPELLANT

VERSUS

ELIA WANGERE BUSANA.....1ST RESPONDENT

NDAGABWENE NAGOTE.....2ND RESPONDENT

MERESIANA MELEKA.....3RD RESPONDENT

MAKOLE BWIRE.....4TH RESPONDENT

SHADRACK WANGELE.....5TH RESPONDENT

DEOGRATIUS MNAKU NAGABONA.....6TH RESPONDENT

KAMINA WANGERE.....7TH RESPONDENT

OBERD BUNDI.....8TH RESPONDENT

NYASAMI CHIBUGA.....9TH RESPONDENT

JUDGMENT

Date of last Order:15/05/2024

Date of Ruling:07/06/2024

K. D. MHINA, J.

This is a second appeal. It stems from the decision of the Senga Ward Tribunal in the Geita in which the appellant sued the respondents for

recovery of a parcel of land measuring 28 acres (hereinafter to be referred to as the suit land), which was allegedly trespassed by the respondents.

Briefly, the appellant alleged that in 1985, his father, Mabiba Mulegeli, was allocated land at Nyabuhuli Hamlet by the Kaseni Village. In 1992, the appellant was given that land by his father. Thereafter, he built a house and moved in with his family.

In 1995, the appellant was arrested, charged, convicted, and sentenced to 30 years for the offence of armed robbery. He was released in 2006, and in 2016, he returned to the village, but he found the respondents had trespassed on the suit land. That act did not amuse the appellant, so he decided to file the case at the Ward Tribunal.

On their side, the respondents alleged that they purchased the suit land from Nyasami Chibuga (9th respondent). In her evidence at the tribunal, the 9th respondent alleged that in 1958, together with her husband, Matunda Mlegeli, they acquired the suit land and never gave it to any person.

In the end, the Ward Tribunal decided in favour of the respondents, holding that the 9th respondent and his late husband were the owners of

the suit land and the 9th respondent sold the land to other respondents lawfully.

The Ward Tribunal thus declared the respondents as the rightful owners of that suit land of land.

Aggrieved, the appellant appealed to the District Land and Housing Tribunal (henceforth the DLHT) for Geita. But on 8 November 2023, the DLHT dismissed his appeal for want of merits.

Undaunted, the appellant preferred this second appeal, with six (6) grounds of appeal as follows;

- i. The DLHT erred in law by removing in the proceedings the respondents who were dead without replacing them with the administrators of their estates*
- ii. The DLHT erred in law and fact by determining the appeal from the Ward Tribunal while that Tribunal did not have jurisdiction to determine the dispute whose subject matter was the land of 28 acres and the value of TZS. 3,000,000/=.*
- iii. The DLHT erred in law and fact by determining the appeal while the Ward Tribunal's decision was delivered on 12 January 2017, a public holiday.*

- iv. The DLHT erred in law by confirming the decision of the Ward Tribunal while the secretary of the Tribunal sat as a member of the Tribunal.*
- v. The DLHT erred in law by allowing the advocate who drew the petition of appeal for the appellant to represent the respondents during the appeal.*
- vi. The DLHT erred in law and fact by failing to analyse the evidence properly regarding the acquisition of the suit land.*

The appeal was argued by way of written submissions. The appellant was represented by Mr. Beatus Emmanuel, Advocate, while the respondent had the services of Mr. Erick Lutehanga, Advocate.

Arguing the first ground of appeal, Mr. Emmanuel submitted that on 30 June 2021, the appellant's counsel prayed to the DLHT to comply with the procedures of joining the administrators of the 3rd and 10th respondents. However, on 25 May 2025, the DLHT ordered for amendment of the petition of appeal. He submitted that was contrary to the law by citing **Hamza Hatibu and ten others vs. Salima Saidi Juma**, Land Appeal No. 1 of 2020, Tanzlii (HC-Arusha).

On the second ground, he submitted that the suit land measured 28 acres with the value of TZS. 3,000,000/=; therefore, according to section

15 of the Land Disputes Courts Act, Cap 216 R: E 2019, the ward tribunal did not have the jurisdiction to determine that dispute. To support his argument, he cited **Kubili Sululu vs. Mhindi Shija**, Misc. Land Case No. 15 of 2020 (Tanzlii), where it was held that;

"Whenever a suit or dispute is presented to court or tribunal, the initial step is to determine whether that forum has jurisdiction to deal with the matter."

Regarding the third ground, Mr. Emmanuel submitted that the Ward Tribunal delivered its decision on 12 January 2017, which was a public holiday and contrary to section 60 (2) of the Law of Interpretation Act, Cap 1 and sections 2 and 5 of Public Holiday Acts, Cap 35.

To substantiate his argument, he cited **Pius @ Edson James Mwanyingili vs. Lwesya Bernard and two others**, Misc. Land Application No. 31/2021(Tanzlii) and **Philip Tyla vs. Vedastina Bwagi**, Civil Application No. 546/01 of 2017 (Tanzlii), where it was held that the court cannot conduct its business on public holidays and a party cannot file a document during public holidays.

On the fourth ground, the appellant faults the decision of the DLHT because of the involvement of the secretary of the Senga Ward Tribunal in the decision-making. He argued that the name and signature of the secretary appeared in the decision of the Ward Tribunal as one of the members who decided the matter. He explained that was contrary to Section 5 (1) of the Ward Tribunal Act, Cap 206 and the holding of this Court in **Lucia Maswenga vs. Joseph Lutambi**, Land Appeal No. 8 of 2020, HC-SHINYANGA(Tanzlil), at page 10 and 11.

Faulting the DLHT in the fifth ground of appeal, Mr. Emmanuel submitted that the advocate who represented the respondents at the DLHT was the one who prepared the grounds of appeal for the appellant at the DLHT.

He referred to the DLHT proceedings dated 22 March 2019, in which the appellant complained about that issue, but the DLHT did not determine it. Therefore, there was a conflict of interest, and according to the case of this Court of **Jitesh Changulal Ladwa vs. Bhavesh Chandulal Ladwa and five others**, Misc. Civil Application No. 101 of 2020(Tanzlil), conflict of interest affects and nullifies the proceedings.

Regarding the last ground, Mr. Emmanuel submitted that the DLHT failed to analyse the evidence properly. He explained that there was no dispute that the appellant lived in the land before imprisonment. Further, his father, Mabiba Mgengeli, gave him that land before he passed away. Therefore, the Chairman of the DLHT was supposed to ask himself how the 9th respondent acquired that land and if she sold it lawfully.

In response to the 1st ground of appeal, Mr. Lutehanga submitted that the appellant's counsel was the one requested at the DLHT to amend the application by removing who were the 3rd and 10th respondents after their deaths were reported. That prayer was granted, and on 3 June 2022, the appellant side filed the amended application.

On the 2nd ground, he responded that jurisdictional issues can be raised at any stage of the case, even at the appeal stage. But there must be material evidence for it. To bolster his submission, he cited the decision of the Court of Appeal of **Sospeter Kahindi vs. Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (Tanzlii).

He further submitted that both at the Ward Tribunal and District Land and Housing Tribunal, there was neither evidence nor document to indicate

the value of the suit land. The appellant was the one who filed the dispute; therefore, he was the one who was responsible for indicating the value of the suit land.

Responding to the 3rd ground, Mr. Lutehanga submitted that the appellant is raising this ground for the first time in this second appeal, which is contrary to the law as per the case of **Galus Kitaya vs. The Republic**, Criminal Appeal No, 196 of 2015 (Tanzlii).

Further, the appellant participated fully in the trial, and on the date when the decision was delivered, he was present and signed the decision. In addition, the appellant failed to indicate how that act prejudiced him.

On the 4th ground, he responded that it is trite law that the secretary is not a member of the ward tribunal. He explained that in this matter, when the dispute was heard at the ward tribunal, the secretary was present to record the proceedings, and that is allowed. He substantiated his submission by citing the decision of the Court of Appeal in **Adelina Koku Anifa and another vs. Byarugaba Alex**, Civil Appeal No. 46 of 2019 (Tanzlii).

Further, according to section 4(1) of the Ward Tribunal Act, read together with section 11 of the Land Disputes Courts Act, Cap 216, the coram for the ward tribunal should consist of at least four members.

He explained that four members and the secretary were at the ward tribunal. Therefore, according to the law, the coram was proper, and there was no evidence that the secretary had participated in the decision-making.

Disputing the 5th ground, Mr. Lutehanga submitted that there was no conflict of interest because the appellant personally prepared and signed the petition of appeal filed at the DLHT. The petition was received at the DLHT on 7 February 2017, and the name Erick Lutehanga did not appear as the one who prepared that petition.

Further, he submitted that his roll number is 6765, and he was admitted in July 2018, while the petition was filed on February 7, 2017. Therefore, it was impossible for the advocate who was admitted in 2018 to prepare and file the petition in 2017.

Responding to the last ground, both tribunals properly analysed the evidence, and the appellant failed to prove that he owned the suit land.

At the Ward Tribunal, the appellant testified that his late father owned the land, but he failed to prove if he was the administrator of the estate.

Further, the appellant failed to prove that he was given that land as a gift. On this, Mr. Lutehanga stated that there was no evidence from any relative that the appellant was given that land, and he failed to tender any evidence that he was given by way of a gift. To cement his submission, he cited *The Registered Trustees of Al Markaz Islamia **Tanbihil Ghafiliina Fii Diin (Al Mallid) vs. The National Muslim Council of Tanzania***, Land Appeal No. 43 of 2016 (HC-Dodoma).

In a brief rejoinder, Mr. Emmanuel, in respect of the 1st ground, stated that even if the counsel for the appellant erred in requesting to amend the application by removing who were the 3rd and 11th respondents still, the DLHT had a duty to make sure that the rights of the appellant were not jeopardised.

Regarding the pecuniary jurisdiction, he rejoins that the Tribunal could have examined the exhibits tendered as per the case of **Kubili Sululu vs. Mhindi Shija**, Misc. Land Case No. 15 of 2020 HC (Tanzlii).

On the 3rd ground of appeal, he submitted that delivering a decision on a public holiday was an illegality and that parties could not agree to act contrary to the law.

Regarding the secretary of the ward tribunal, he insisted that he participated in the decision-making, and the appellant was prejudiced.

On the issue of conflict of interest and impartiality, Mr. Emmanuel stated that the DLHT did not determine that issue after the appellant raised a complaint.

On the last ground, he rejoins that the issue of the gift was supposed to be proved by the late Mabiba Mlegeli as it was a customary gift that did not need any documentation.

Having objectively gone through the grounds of appeal, the submissions by both parties and the entire records of appeal, I will determine the grounds of appeal starting from the first ground.

The complaint in the 1st ground of appeal was that the DLHT erred in law by removing respondents who were dead without replacing them with the administrators of their estates.

This ground should not detain me long because, having gone through the DLHT proceeds (untyped) dated 25 May 2022, the counsel for the appellant prayed to amend his grounds of appeal by removing who were the 3rd and 10th respondents from the appeal. That prayer was not objected to by the opposed party and was granted by the DLHT. After that, the amendment was done.

In his rejoinder, Mr. Emmanuel stated even if the counsel for the appellant erred in requesting to amend the application by removing who were the 3rd and 10th respondents still, the DLHT had a duty to make sure that the rights of the appellant were not jeopardised.

In such circumstances, I have the following;

First, contrary to what was contained in the ground and the submissions in chief that the DLHT removed those respondents, the truth is that, as per the records, the counsel for the appellant was the one who requested to amend the ground by withdrawing the 3rd and 10th respondents.

Second, in cases, courts are not the advocate for the parties to the suit. It is not the court's duty to stand on behalf of a party when his advocate

erred, as suggested by Mr. Emmanuel. Court as an umpire is like a referee in a football match. Its duty is to decide fairly for both parties.

In this matter, the DLHT had nothing to be blamed for what happened on 25 May 2022. If the appellant thinks he was prejudiced by what happened on that date, he should blame himself, as he was the one who requested an amendment by removing the 3rd and 10th respondents. The DLHT, as an umpire, could not prohibit the appellant from amending and removing the 3rd and 10th respondents.

In **Coseke (T) Ltd vs. Public Service Social Security Fund (Formally known as LAPP)**, Commercial Case No.143 of 2019 (HC DSM-Unreported), it was held that:

"it is common knowledge that the plaintiff is expected, prior to instituting a suit in Court, he was required to make inquiries or search to determine the correct parties to sue"

This equally applies in appeals, where it is the appellant's duty to determine the correct respondents to take, include, and proceed with in the appeal.

For the reasons above, the 1st ground is devoid of merits.

Reverting to the 2nd ground of appeal regarding the jurisdiction of the Ward Tribunal also should not detain me long.

As rightly submitted by Mr. Lutehanga, the appellant raised this issue in this second appeal.

It is trite that the question of jurisdiction can be raised at any stage. See **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70,**

However, there must be material evidence placed before the Court. The evidence against and for that question of jurisdiction. The Court of Appeal cemented this position in **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), where the Court held that:-

"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time, even at the Appellate stage by the Court, but in order for it to be noted and raised, it would require material evidence to be placed before the Court."

Therefore, for the issue of jurisdiction to be raised and determined even at the appellate stage, there must be material evidence for and against.

The records indicate that the issue of jurisdiction was never raised or heard at the Ward Tribunal and District Land and Housing Tribunal.

Mr. Emmanuel, in his rejoinder, tried to persuade this Court that there were sales agreements tendered at the Ward Tribunal. But first, those exhibits were tendered for the purpose of indicating that there were sales. Thus, nothing was submitted for or against the pecuniary jurisdiction.

Therefore, there is no material evidence to enable this court to determine the issue of jurisdiction.

In addition, it was the appellant who filed the dispute at the Ward Tribunal. If the tribunal had no jurisdiction, why did he file the dispute in that tribunal. It is my view that a party cannot benefit from his wrong actions.

Thus, this 2nd issue is devoid of merits.

I now turn to the 3rd ground of appeal that the Ward Tribunal's decision was delivered on 12 January 2017, a public holiday.

In my firm view this also should not detain me long. The ground is raised for the first time in this second appeal.

From the proceedings of both Tribunals, it is apparent that this ground of appeal was raised for the first time in this appeal. It was never objected at the trial tribunal and raised in the first appellate tribunal.

The Court of Appeal in the case of **Melita Naikiminjal & Loishilaari Nakiminjal vs Sailevo Loibanguti** (1998) T.L.R 120 was confronted with a similar issue on whether it can decide on a matter not raised in and decided by the High Court on the first appeal. The Court held that;

*"An issue not raised before the first appellate court cannot for the first time be raised and entertained by the second appellate court. Court of Appeal in the case of **Farida and Another vs Domina Kagaruki**, Civil Appeal No. 136 of 2006 cited with approval in **Kizuwa Kibwana vs Gibson Baingaye**, Misc Land Appeal No. 35 of 2017 where it was held that*

"It is a general principle that the Appellate Court cannot consider or deal with issues that were not conversed or pleaded or raised at the lower court."

The general position of law is that the appellate court cannot entertain a ground that was not raised in the trial court or during the appeal before the first appellate court.

In the instant appeal, the appellant attended on the date the decision was delivered, but he never raised that issue at the Ward Tribunal to object to the delivery. Also, he did not raise it in the first appellate tribunal.

Therefore, the law now bars him from raising it in the second appeal; thus, this 3rd ground of appeal is also devoid of merits.

Regarding the 4th ground that DLHT erred in law by confirming the decision of the Ward Tribunal while the secretary of the Tribunal sat as a member of the Tribunal, I have the following;

After having gone through the submissions from both parties, the record of the Ward Tribunal and the decision of the DLHT, I don't see a reason to fault that judgment of the DLHT on that issue.

At the ward tribunal, there were four members as coram for the tribunal and Boaz Magesa as secretary, and he signed as secretary.

In the case cited by the Chairman of DLHT in its judgment of **Nuru Kassim Swai vs. Rashid Nuru Mbata**, Misc Land Appeal No. 09 of 2019, HC-Moshi (Tanzlii), it was held that;

"In this case, I have read the record of the decision of the ward tribunal of Romu. Members have listed their names and positions and signed against their names at the position corresponding to the names. Down the list, the chairman and the secretary have signed and stamped showing their position. That, in my view, cannot be said to participate in the decision-making.

I have an opinion no injustice has been occasioned as to warranty any complaint."

Equally, in this appeal, where the coram of the Ward Tribunal was properly constituted by four members who signed the decision, the signature of the secretary who signed as the secretary and not a member in any way cannot invalidate the decision of the Ward Tribunal.

Therefore, this ground also is dismissed for want of merits.

On the 5th ground of appeal, the DLHT erred in law by allowing the advocate who drew the petition of appeal for the appellant to represent the respondents during the appeal. I have the following observations;

The record at the DLHT indicates that the petition of appeal received and stamped by the DLHT on 7 February 2017 was drawn and filed by the appellant in person.

Further, the amendment to that petition was filed on 3 June 2022 and was drawn and filed by Mr. Yisambi Siwale, an Advocate on behalf of the appellant.

From above, I have the following observations;

One, there is no evidence that Mr. Erick Lutehanga, the counsel who represented the respondents at the DLHT, also prepared the petition of appeal for the appellant.

Two, it is "wise" and necessary for a complaint of this nature to be backed up by documentation. The documents allegedly prepared by the advocate must be tendered or presented at the court to prove the complaints. Or at least there must be evidence that the advocate had represented the opposite part in the same matter before.

In the absence of documents or valid evidence, the complaint remains unsubstantiated and afterthought.

In this appeal, the complaint on the 5th grounds was not backed by any document or evidence. Therefore, this ground must fail, and I dismiss it.

The last ground is that the DLHT erred in law and fact by failing to analyse the evidence properly regarding the acquisition of the suit land. In determining the ground, I will sail and be guided by the principle enunciated under section 110 (1) of the Evidence Act as a standard in proving a case. The section reads;

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

Similarly, I will be guided by the case of **Hemedi Said vs. Mohamedi Mbilu** (1984) TLR 113, where it was held that;

"He who alleged must prove the allegations."

Therefore, the appellant, who made the allegations at the trial tribunal, had the burden of proof regarding acquiring the suit land at the trial.

In his evidence, the appellant stated that his late father gave him that land in 1992. In 1995, he was convicted and sentenced to 30 years for

armed robbery. In 2006, he was released, and in 2016, he found the land trespassed.

The trial tribunal found that the appellant failed to prove his case. The DLHT confirmed the decision of the ward tribunal by stating that the appellant failed to prove that he was given that land by his father.

I concur with both tribunals below. The appellant failed to prove that his father gave him that land in 1992. Neither document nor witness testified that he was given that land. The appellant even failed to bring relatives to testify that the land was given to him.

Flowing from above, it is quite clear that the appellant failed to prove his case. Both tribunals below correctly analysed the evidence regarding the acquisition of the suit land and decided that the appellant could not prove his case.

In view of the reasons I have endeavoured to assign in this judgment, I find no iota of merit in this appeal as there are no extraordinary circumstances that require this court to interfere with the findings of the DLHT.

Consequently, the appeal stands dismissed with costs.