

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
THE SUB-REGISTRY OF MWANZA
AT MWANZA
LAND APPEAL NO. 1660 OF 2024**

RITHA PASCHAL LYAMBA ----- APPLICANT

VERSUS

Y. FINANCING LTD -----RESPONDENT

JUDGEMENT

7th & 19th June 2024

CHUMA, J.

Aggrieved by the decision of the District Land and Housing Tribunal of Mwanza (herein the DLHT) the appellant lodged his appeal to this court on the following grounds;-

- i. That the trial Chairman erred in law and in fact for determining the matter in favor of the respondent despite the fact that Misc. Application No. 314 of 2015 was illegally instituted
- ii. That the trial Chairman erred in law and in fact for determining the matter in favor of the respondent despite the fact that there was no proof of issued summons which showed that the

applicant was duly served to appear and defend herself in the Misc. Application No. 314 of 2015

- iii. That the trial Chairman erred in law and in fact for failure to consider that Misc. Application No. 314 of 2015 denied the applicant's right to be heard
- iv. That the trial Chairman erred in law and fact for failure to consider the fact that the person who represented the respondent lacked locus stand

This appeal was heard *ex parte* and the Appellant was represented by Chrispine Simon Mnyeke, learned Advocate.

In his submission, Mr. Mnyeke argued that as far as the first ground is concerned the court had no jurisdiction as Section 57 of The Land Registration Act Cap 344 states that not every land shall operate as a mortgage unless the mortgage has been registered. He acknowledged that both parties entered a load agreement of Tsh 3,000,000/- and that it did not give the Respondent automatic right to file an application no. 314 of 2015 to evict his client while there was no even a main suit that led to Misc. Application No. 314 of 2015.

On the second ground, Mr. Mnyeke argued on the 2nd and 3rd ground altogether and abandoned the third ground where he stated that his client was not accorded the right to be heard in the Misc. Application No. 314 of 2015 as the same was heard *ex parte*. He claims that there is no proof of service by summons nor publication to prove that the appellant was aware of the application and that his client was surprised by the court brokers evicting the applicant from the premises.

In his last ground, Mr Mnyeke submitted that the respondent's side in Misc. Application No.314 of 2015 was represented by an unqualified person therefore such proceedings had a number of irregularities which he considers to be on the face of record to warrant an extension of time without counting each day of delay and referred this court to the case of **Tanzania Breweries Ltd vs. Harman Bildad Minja** Civil Application No. 11 of 2019 and therefore asked this court to quash the decision of the Tribunal Court and set aside the *ex parte* decision.

Going through the record of the Tribunal it is amply clear that, the claims between the parties were founded on contract as per page two of the

trial tribunal in Misc Application No 314/2015 which I prefer to reproduce for ease of reference:

The respondent was their client and she advanced a loan of Tsh 3,000,000/=on 18/12/2013. The said loan was to be paid back within one month with an interest of Tsh.900,000/=...in the said loan agreement, the respondent had put her house in plot No.1202 Block LL Mwanza as security for loan but she failed to return a loan as agreed.

In the instant matter, the District Land and Housing Tribunal is one of the courts established under the Land Act, Cap 113 R.E. 2019, the Village Land Act, Cap. 114 R.E 2019 and the Land Disputes Courts Act, Cap 216 R.E. 2019 to deal with disputes over land matters. But as highlighted above it is an undisputed fact that the party's dealings are based on a contract, specifically a loan agreement which is what the record indicates as a source of the dispute. The pertinent question here is whether the trial tribunal had jurisdiction to pertain to the application.

My discussion on the raised issue will be guided by the following authorities which I have been persuaded by. In the case of **William Sabuka**

V. Safari Sipembo Land Appeal No 31/2018. citing with approval the case of **Exim Bank (T) Limited** (supra) on page 8 it was held that:

"Two matters have to be looked upon before deciding whether the court is clothed with jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the court has the power to grant them and whether they correlate with the cause of action..."

In the instant appeal, as I have earlier highlighted, the dispute between the parties arose out of their loan agreement which the appellant appears to have failed to repay and the respondent lodged the referred application seeking for a vacant possession to a suit house secured as security. The trial tribunal issued the sought order ordering eviction of the appellant to a suit house and on the same application the trial tribunal went on appointing a court broker to execute such order.

Further, the record is dead silent on whether the parties had ever engaged any court of competent jurisdiction to ascertain the party's right over the agreement.

Taking into account that, the mere fact that the appellants have secured a house as security for the loan does not turn the suit to be a land

dispute a stance which also Mr.Mnyeke had in mind though he argued in the other way based on registration issue.

This position is fortified by the decision of this Court in the case of **The National Bank of Commerce Limited V National Chicks Corporation Limited and four others** Civil appeal No.129/2015 where the Court of Appeal citing **Exim Bank (T) Limited v Agro Impex (T) Ltd & others Land Appeal No 29/2008**, observed that:

"The mere fact that the second and third defendants have put some security for a loan does not turn the suit to be a land dispute. Additionally, in my view, suing on an overdraft facility per se does not turn the suit into a / dispute and give this Court the necessary jurisdiction.... this suit is squarely based on a contractual relationship between a banker and consumer whereby the consumer has overdrawn and failed to pay.

A similar position is well insisted in the case of **Britania Biscuit Limited v National Bank of Commerce Limited & 3 others Land case No.4/2011** that:

"...the mere facts that landed properties were mortgaged will not turn the matter to a land dispute. The matter is purely commercial nature and it is an outcome of unperformed commercial transaction which is far away

from the jurisdiction of the Land Division of the High Court."

Guided by the foregoing observation, it is my finding that, the instant matter by its nature is contractual resulting from the non-performance of contractual obligation which is beyond the jurisdiction of the District Land and Housing Tribunal. Jurisdiction is a creature of statutes that can not be assumed even by parties' consent as it was held in the case of **Shyam Thanki and Others V. New Palace Hotel** [1971] 1. EA 199. See also the case of **Mathias Eusebi Soka (As personal representative of the Late Eusebi M. Soka) V The Registered Trustees of Mama Clementina Foundation and two Others** Civil Appeal No 40 of 2001. I therefore find the trial tribunal seized itself with the jurisdiction not conferred by the law. No court can confer jurisdiction upon itself. The impact of assuming powers that one does not possess was discussed by the Court of Appeal of Kenya in the persuasive case of **Owners of Motor Vessel Lilian V Caltex Oil Kenya Limited(1989) KLR** where inter -alia it was held that;

"Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing."

It suffices also to hold that the question of jurisdiction is a matter of law as it goes to the root of the matter thus it may be raised at any stage even on the appeal stage as it was held in the case of **Tanzania Revenue Authority V.Tango Transport Company Ltd.** In the spirit of the foregoing, the whole trial tribunal proceedings are void ab initio for want of jurisdiction as here above explained. In that vein, I uphold the first ground of the appeal and hold that the trial Tribunal did not have jurisdiction to entertain the matter.

This ground suffices to dispose of this appeal without venturing to the rest grounds as arguing them will save nothing.


In the end, I find the appellants' appeal meritorious. Consequently, I hereby nullify the proceedings, and quash the ruling in application No 314/2015 and other subsequent rulings for being all void ab initial and set aside the resultant order(s) of the trial Tribunal. Cost to follow the event.

Dated at **MWANZA** this 19th day of June 2024.




W. M. CHUMA
JUDGE

Judgment delivered in court before Mr. Amri Linus advocate holding the brief of Mr.Mnyeke advocate for the appellant this 19th day of June 2024.



W. M. CHUMA

JUDGE