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

LAND APPEAL NO. 7546 OF 2024

(Originating from the decision of Geita District Land and Housing Tribunal in Land Application No. 30 of 2020, dated 1 March 2024, Hon Masao-Chairman)

MALUGU KAMBILI.....1st APPELLANT
MINZA MABULA.....2nd APPELLANT
PENDO JACKSON.....3rd APPELLANT

VERSUS

ILAMBA MAMBA TAGASA.....RESPONDENT

JUDGMENT

Date of last Order: 27/05/2024
Date of Judgment: 28/06/2024

K. D. MHINA, J.

This is the first appeal. It stems from the District Land and Housing Tribunal ("the DLHT") for Geita in Land Application No. 30 of 2020, whereby Ilanga Mamba Tagasa, the applicant who is now the respondent [to be referred as the respondent], claimed against Malugu Kambili, Minza Mabula and Pendo Jackson, the respondents who are now the appellants [to be referred as the appellants], *inter alia* for;

i. An order of payment of TZS. 3,000,000/= being rent arrears payable to the respondent.

ii. An order of eviction against the appellants if they fail to pay the rent arrears.

Briefly, the respondent alleged that in 2014, 2015 and 2018, he entered into a tenancy agreement with the 1st, 2nd and 3rd respondents over the business booths located at Katoro within the District and Region of Geita.

He further alleged that the respondents were paying their respective rents until 2019 when the dispute arose. Therefore, he was claiming the rents for 2019, 2020 and 2021.

On their side, the appellants briefly alleged that the respondent had no locus to claim rent arrears for the reason that they had a tenancy agreement with Katoro and not the appellants.

The above "*cause celebre*" put the parties at issue, and both presented their testimonies before the DLHT.

After the full trial, the DLHT decided the matter in favour of the respondent by ordering the appellants, among other things, to pay rent arrears of TZS. 3,000,000/=, to vacate from the business booths and hand over the same to the respondent.

Undaunted, the appellants appealed to this court and preferred the following grounds to fault the decision of the DLHT;

i. *The DLHT erred in law and fact in determining the application, which was under the jurisdiction of the Ward Tribunal.*

ii. *The DLHT erred in law and fact by failing to properly analyse evidence and thus arrived at a wrong conclusion.*

iii. *The DLHT erred in law and fact by failing to declare that the appellants breached the tenancy agreement while they fulfilled their contractual obligations to the end.*

iv. *The DLHT erred in law and fact by failing to decide that the respondent had no locus because he was not the owner of the premises.*

The appeal was argued by way of written submissions. The appellants were represented by Mr. Ernest Mbalamwezi, a learned advocate, and the respondent was represented by Mr. Beatus Emmanuel, also a learned advocate.

Faulting the trial DLHT on the first ground of appeal, briefly, Mr. Mbalamwezi submitted that the application filed at the DLHT in 2020 as Application No. 32 of 2020 and the reliefs claimed were the recovery of TZS. 3,000,000/= as rent arrears and eviction of the appellants from the

premises if they failed to pay the rent arrears.

He further submitted that the application was filed before the enactment of the Written Laws (Misc. Amendment) Act. No. 5 of 2021, which removed the powers of the Ward Tribunal to hear and determine land disputes.

Before that amendment, ward tribunals had the power to hear and decide land disputes, provided the value of the disputed land did not exceed TZS 3,000,000 as it was provided under sections 15 and 16 of the Land Disputes Courts Act, Cap 216 R: E 2019.

Therefore, the DLHT had no jurisdiction to hear and decide Application No. 32 of 2020.

Arguing the second and third grounds together, Mr. Mbalamwezi submitted that the appellants fulfilled their tenancy agreement by paying the rent for the whole period of the agreement. That means the complaints by the respondent did not touch the period when the tenancy agreement was subsisting. Therefore, it was improper for the DLHT to hold that the appellants had breached the tenancy agreement. To bolster his argument, he cited **Zetaki Investment Co. Ltd vs. Bank of Africa Tanzania Ltd**, Civil Case No. 3 of 2020 (HC-Tabora), where it was held;

> *"It is common knowledge that breach of contract occurs where its terms have not been performed as agreed".*

In his submission in chief, Mr. Mbalamwezi abandoned the fourth ground of appeal.

Respondent to the submission in chief, according to paragraph 4 in the application, the value of the land in dispute was TZS. 45,000,000/=. Therefore, the appellants were trying to mislead the court.

Further, he submitted that TZS. 3,000 000/= was the relief claimed, and was the unpaid rent. Thus, it could not be the value of the land in dispute. For that reason, the court could not grant the relief that was not claimed. To substantiate his submission, he cited the decision of this Court in **NMB Bank PLC vs. Seiph Idd Seiph@ Seifu Iddy Seifu@ Seifu Iddi Seifu @ Sifu Iddy Sif**, Civil Appeal No. 12 of 2022 (Tanzlii) where it was held that;

> *"... In other words, the court cannot grant what is not asked for? These are fundamental legal principles which should not be forgotten. Some jurists dared to say that court is not your mother who can give even those which are not asked for."*

Therefore, it was proper for the DLHT to hear and determine the application as it had jurisdiction.

Furthermore, he submitted by raising the issue of jurisdiction in the appeal, the appellants, while there must be material evidence to prove that fact, try to deny the respondent's right through the back door. On this, he cited **Yazidi Kassim t/a Yazidi Auto Electrical Repairs vs. Attorney General**, Civil Appeal No. 354 of 2021 (Tanzlii).

Regarding the second and third grounds, he submitted that after the expiration of the tenancy agreement, the appellants continued to occupy the premises without paying rent without renewing the agreement or issuing the notice to the respondent. Therefore, they were bound by the terms and obligations of the earlier agreement under sections 79 (1) (a), (c) and (4) of the Land Act, Cap 133.

The appellant did not file their rejoinder.

Having objectively gone through the grounds of appeal, the submissions by both parties and the entire records of appeal, I shall begin with the first ground of appeal regarding the jurisdiction of the DLHT.

My take off in this matter as a starting point is the decision of the Court of Appeal of Tanzania in **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70,** where it held that:-

"The question of jurisdiction can be raised at any stage."

Though jurisdiction can be raised at any stage of the trial but, there are some conditions. The Court of Appeal enunciates these conditions in **Yusuf Khamis Hamza vs. Juma Ali Abdallah, Civil Appeal No. 25 of 2020** (Tanzlii), where it was 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, from two cited Court of Appeal decisions, the conditions for raising the issue of jurisdiction are three;

i. It can be raised at any stage of proceedings.
ii. Parties must be afforded the right to be heard.
iii. There must be material evidence to be placed before the Court to enable the Court to determine the matter.

In the instant appeal, the issue of jurisdiction was raised as the ground of appeal. But since jurisdiction to adjudicate any matter is a creature of statute and a point of law and can be raised at any stage, it was not offensive on the part of the appellants to raise it in the first appellate stage as a ground of appeal.

Further, both parties were afforded the right to be heard and presented their submissions for and against whether the DLHT had the jurisdiction to hear and determine Application No. 30 of 2020 between the parties.

Therefore, it is my firm view that the issue of jurisdiction was rightly raised, and both parties were afforded the right to be heard. They were availed of an opportunity to submit facts and material evidence for and against the jurisdiction of the DLHT on the matter.

Now, the issue for deliberation is whether DLHT had jurisdiction to hear and determine Application No. 30 of 2020.

The controversy between the parties is whether the value of the dispute (subject matter) was TZS. 3,000,000/= as submitted by the appellants or TZS. 45,000,000/= as submitted by the respondent.

This should not detain me long because, at the trial, the dispute referred by the respondent was the breach of the tenancy agreement, which resulted in unpaid rent by the appellants. He also claimed the recovery of the unpaid rent, which accumulated to TZS. 3,000,000/=.

Further, in its decision, the DLHT ordered the appellants to pay the rent arrears of TZS. 3,000,000/= vacate from the business booths and hand over the same to the respondent.

What Mr. Emmanuel submitted cannot be the basis of the pecuniary jurisdiction in the matter. The value of the business booths was TZS. 45,000,000/=, which he alleged the appellants defaulted on paying the rent.

Apart from that, the respondent did not claim to be declared the lawful owner of the booths against the appellants.

From the above discussion, it is quite clear that the subject matter at the trial tribunal was a claim of rent arrears of TZS. 3,000,000/=. Therefore, the pecuniary jurisdiction cannot be premised on TZS. 45,000,000/= the value of the booth. As per the application, the dispute was not the ownership of the premises between the appellants and the respondent.

The land settlement regime to mediate, hear and determine the disputes in our country is vested exclusively to the courts mentioned under section 167 (1) of **the Land Act** and section 3 (1) (2) of the **Land**

Dispute Courts Act. Section 3 (1) and (2) of the Land Dispute Settlement Act reads that;

> *3.-(1) Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.*
>
> *(2) The Courts of jurisdiction under subsection (1) include-*
>
> *(a) The Village Land Council;*
>
> *(b) The Ward Tribunal;*
>
> *(c) The District Land and Housing Tribunal;*
>
> *(d) The High Court; or*
>
> *(e) The Court of Appeal of Tanzania.*

However, following the amendment of the Land Disputes Courts Act [Cap.216 R.E 2019] on 11 October 2021 by the Written Laws (Miscellaneous Amendments No. 3) Act No.5 of 2021, the jurisdiction of the ward tribunals over land matters is now limited to mediation.

Further, the amended prohibits the District Land and Housing Tribunals from hearing and deciding a land dispute unless the Ward Tribunal has attempted to settle the dispute amicably and failed, and it has issued a certificate that mediation has been attempted but it failed except where the tribunal fails to settle it within 30 days,

Before the amendment, ward tribunals had the power to hear and decide land disputes. Section 15 of the Land Dispute Courts Act which was repealed by section 45 of the Written Laws (Miscellaneous Amendments No. 3) Act No.5 of 2021. The section provided that;

> *15. Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall, in all proceedings of a civil nature relating to land, be limited to the disputed land or property valued at* ***three million shillings.*** [Emphasis provided]

Flowing from above in this appeal, the trial record indicated that Application No. 30 of 2020 was filed in 2020. That means it was before the amendments to the Land Disputes Courts Act.

Further, as already alluded to above, the subject matter of the dispute between the parties was the recovery of rent, and the amount was TZS. 3,000,000/=

Therefore, it is clear that when the respondent referred his dispute to the Land District and Housing Tribunal in 2020, the Tribunal did not have the jurisdiction to hear and determine it.

From above, this ground alone suffices to dispose of the whole; therefore, I see no need to deliberate and determine the remaining grounds as they will not change the outcome of this appeal.

In the foregoing, therefore, I allow the appeal by quashing the proceeding and judgment of the trial tribunal and setting aside all orders.

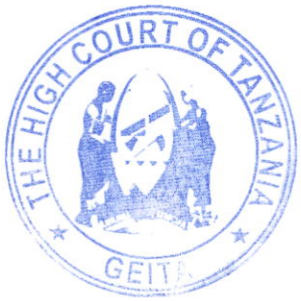
The appeal is allowed with costs awarded to the appellants.

It is so ordered.

K. D. MHINA
JUDGE
28/06/2024

Court:-

The right to appeal is fully explained to the parties.



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