

UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND APPEAL NO. 25 OF 2023

(Originating from the Judgment and Decree, in the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Case No. 125 of 2021)

NASSORO RASHID CHIMBWA APPELLANT

VERSUS

RASHID KIBWANA KIUNGAMILA..... RESPONDENT

JUDGMENT

29th Sept, 2023 & 16th Jan, 2024

M.J. Chaba, J.

This is a second appeal originating from the decision of the Mlali Ward Tribunal in Land Case No. 10 of 2021. According to the records, initially, the respondent, Rashid Kibwana Kiungamila commenced a case against the appellant, Nassoro Rashid Chimbwa claiming that, the appellant trespassed into his land. After a full hearing, the Mlali Ward Tribunal (the trial Tribunal), declared the respondent as the lawful owner of the suit land.

Aggrieved by the decision of the trial Tribunal, the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Morogoro (the DLHT) where his appeal was dismissed. Still aggrieved, the



appellant has approached this Court seeking for, among other things, an order of this Court to quash and set aside the Judgment, Decree and Orders issued by both Lower Tribunals based on the following grounds of appeal: -

1. That, the trial Chairperson erred in law and fact for failure to re-examine the records of Mlali Ward Tribunal in Land Case No. 10 of 2021 to ascertain its correctness.
2. That, the trial Chairperson erred in law and fact for upholding the decision of Mlali Ward Tribunal in Land Case No. 10 of 2021 without reasonable legal justifications.
3. That, the trial Chairperson erred in law and fact for failure to exercise her appellate jurisdictional powers.

At the hearing of the appeal, Mr. D. Kweka, Learned Advocate represented the appellant, whereas the respondent appeared in person, and unrepresented. By consensus, the appeal was argued and disposed of by way of written submissions. In compliance with the Court's order, the appellant drew and filed his submission in support of the appeal timely on 19th July, 2023, whereas the respondent for reasons better known by himself did not file his reply to submission in chief, hence the matter proceeded ex-parte against him.

Submitting in support of the appeal, the applicant consolidated all three grounds of appeal into two grounds, to wit:



1. That, the trial Chairperson erred in law and fact for failure to re-examine the records of Mlali Ward Tribunal in Land Case No.10 of 2021 to ascertain its correctness; and
2. That, the trial Chairperson erred in law and fact for upholding the decision of Mlali Ward Tribunal in Land Case No.10 of 2021 without reasonable legal justifications.

Starting with ground 1, the appellant averred that, it is statutory requirement that, the Ward Tribunal should not adjudicate, but it should mediate the matter pursuant to the provision of the law under section 13 of the Disputes Courts Act, [CAP. 216, R.E. 2019], as amended by the Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 which was gazetted through the Government Notice No. 41, Volume 102 dated 11th day of October, 2021.

He averred that, it is evident from the records that, the trial Ward Tribunal in Land Case No. 10 of 2021 adjudicated the matter on the 3rd day of November, 2021 instead of mediating the litigants as required by the law. In this regard, the first Appellate DLHT for Morogoro through Land Appeal No. 125 of 2021 was supposed to re-examine the records of Mlali Ward Tribunal (Land Case No. 10 of 2021) so as to ascertain its legality or correctness as to whether the mediation was effectively done as per section 13(3) of Land Disputes Courts Act, [CAP. 216, R.E. 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 (supra).



With regard to ground 2, the appellant asserted that, section 13 (3) of The Land Disputes Courts Act as amended by The Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 (supra) prohibits the DLHT to hear any proceedings affecting the title or any interest in land unless the Ward Tribunal indicates that it has failed to mediate the litigants. According to the records, it shows that the DLHT for Morogoro through Land Appeal No. 125 of 2021 upheld the decision of the trial Ward Tribunal without any legal justification.

Based on the above submission, the appellant urged this Court to allow his appeal by quashing and set aside the decisions of Mlali Ward Tribunal and the District Land and Housing Tribunal for Morogoro, at Morogoro respectively, and for the sake of justice, trial de novo be ordered.

I have sensitively examined and considered the records of the Ward Tribunal, the DLHT and the appellant's submissions in line with the grounds of appeal. The fundamental issue that calls for deliberation and determination by the Court is, whether the Ward Tribunal of Mlali adjudicated the matter between the parties herein instead of mediating them as per requirements of the provision of section 13 (3) of The Land Disputes Courts Act, as amended by The Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 (supra).

Having scanned through the trial Tribunal records, this matter need not strain my mind as it is clearly evident in the records that, at Mlali Ward



Tribunal, the respondent filed the complaint on 1st day of September, 2023. Further, it is apparent on records that, the trial Tribunal took the evidence of the respondent on 8th September, 2021, and 15th September, 2021, whereas that of the appellant was also taken and recorded on 15th September, 2023 and further that, on 9th October, 2021 the trial Tribunal visited the *locus in quo* where on the same date, the trial Tribunal adjourned the case for judgment which was set to be delivered on 17th November, 2023.

As stated earlier by the appellant, section 13 of the Land Disputes Courts Act, as amended by the Written Laws (Miscellaneous Amendments) Act No. 03 of 2021 reduced the powers of the Ward Tribunals from entertaining land matters to mediation processes where its main duty is to mediate the parties instead of dealing with the adjudication. For ease of reference, I find it apt to reproduce the relevant provision of The Written Laws (Miscellaneous Amendment) Act No. 03 of 2021, which altered the jurisdiction of the Ward Tribunals in dealing with land disputes:

"45. The principal Act is amended in section 13, by;

(a) deleting subsection(2);

(b) re-numbering subsections (3) and (4) as subsections (2)

and (3) respectively; and (c) adding immediately after subsection (3) as renumbered the following:

"(4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting



the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably:

Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal.

(5) The Minister responsible for legal affairs may, in consultation with the Minister responsible for ward tribunals and Minister responsible for lands, make rules No. 5 Written Laws (Miscellaneous Amendments) (No. 3), Act 2021 26 prescribing the conduct and procedure of mediation of land disputes.”

Thus, applying the above position of the law to the matter under consideration, what can be deduced from the records of the trial Ward Tribunal is that, the Act came into force on the 11th day of October, 2021 when the hearing of both parties in the matter was already conducted on 9th October, 2021 and the trial Ward Tribunal was left with the task of composing and delivering its judgment based on the evidence tendered by the parties on 17th November, 2023. It therefore goes without saying that, the trial Ward Tribunal acted without jurisdiction as it dealt with the matter when the law that was in existence had already been amended. In the case of **Director of**



Public Prosecution (DPP) vs. Jackson Sifael Mtares (Criminal Appeal 2 of 2018) [2018] TZCA 393 (7 September 2018) (Extracted from www.tanzlii.org), the Court of Appeal of Tanzania was faced with a similar scenario and had the following to state:



"Since that law was in existence at the time both lower courts handed down their respective judgments, to have not applied that law was an error entitling the Court to intervene. Consequently, the first ground of appeal has merit and we allow it."

In the final analysis, and based on what I have endeavoured to demonstrate hereinabove, I find and hold that following amendment of the provision of section 13 of the Disputes Courts Act, [CAP. 216 R.E. 2019], as amended by The Written Laws (Miscellaneous Amendments) Act No. 03 of 2021, gazetted through GN. No. 41, Volume 102 on the 11th day of October, 2021 came into operation while the judgment of Mlali Ward Tribunal was still in the hands of the trial Tribunal. In my considered view, the trial Tribunal was supposed to refer the matter to the first Appellate DLHT for guidance instead of continuing with the business as usual. Again, as correctly submitted by the appellant, the first Appellate DLHT erred in law and fact for failure to re-examine properly the records of Mlali Ward Tribunal and sustained the decision thereof without reasonable legal justifications.



In the upshot, I allow the appeal and proceed to quash the decisions of both Mlali Ward Tribunal in Land Case No. 10 of 2021 and the District Land and Housing Tribunal for Morogoro, at Morogoro in Land Appeal No. 125 of 2021 and set aside the orders stemming therefrom. In the event, I direct the records be remitted back to Mlali Ward Tribunal for it to deal with the Land Dispute between the parties in compliance with the current law and procedures. Each party shall bear its own costs. Order accordingly.

DATED at MOROGORO this 16th day of January, 2024.






M. J. Chaba
Judge

16/01/2024

Court:

Judgment to be delivered by the Hon. Deputy Registrar

M. J. Chaba
Judge

16/01/2024

Court:



Judgement delivered under my hand and Seal of the Court in Chambers this 16th day of January, 2024 in the in the presence of both parties who appeared in person and unrepresented.



S. P. KIHAWA
DEPUTY REGISTRAR
16/01/2024

Court:

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.



S. P. KIHAWA
DEPUTY REGISTRAR
16/01/2024