

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISCELLANEOUS LAND CASE APPEAL NO. 17 OF 2015

(From the decision of District Land and Housing Tribunal of Mtwara (A.R. Kirumbi, Chairman) in Land Appeal No. 45 of 2015, Original Mtonya Ward Tribunal, Newala District in Mtwara Region. in Land case No. 3 of 2015)

KARIMU SHAIBU.....APPELLANT

Versus

MUSSA HALFANI BAHATISHA.....RESPONDENT

Date of last order: 15/11/2016

Date of Judgment: 29/11/2016

R U L I N G

F. Twaib, J:

This is a second appeal filed by Karimu Shaibu (the appellant) after his first appeal at the District Land and Housing Tribunal of Mtwara through Land Appeal No. 45 of 2015 against the decision the Ward Tribunal of Mtonya in Land Case No. 3 of 2015 was unsuccessful. He has filed four grounds faulting the two lower tribunals for dismissing his claim.

However, after going through the record, the court noted some legal shortcomings, including the issue of *locus standi* of the appellant, which might affect the competency of the appeal. On 15th November 2015, the court decided to invite the parties to address it on the competency or otherwise of the appeal before considering the issue of *locus standi*. The appellant was represented by Mr. Alex Msalenge, learned advocate, while the respondent was represented by Mr. Robert Dadaya, learned advocate.

Submitting on the competency of the appeal, Mr. Msalenge pointed out that when this matter came up for hearing on 6th October 2016, he discovered some shortcomings in the proceedings of the Ward Tribunal and intended to withdraw the appeal. But he noticed that doing so would have left the shortcomings unattended and thus opted to highlight them, so that the court may address them.

Mr. Msalenge pointed out that one of the shortcomings is the issue of *locus standi*. He argued that according to law, proceedings on behalf of a deceased person may only be commenced by the administrator of the estate of the deceased as was held by this Court in the case of **Zuhura Bakari Mnutu v Ali Athumani**, Miscellaneous Land Case Appeal No. 9 of 2015 H.C Mtwara (unreported), quoting with approval the decision in **Julius Maganga v Robert Malando**, (PC) Civil Appeal No. 112 of 2004, (HC) at Mwanza (unreported).

The other issue relates to the pecuniary jurisdiction of the Ward Tribunal and the reliefs awarded by the Tribunal. Mr. Msalenge argued that the property in question is in the middle of Newala Township and thus its value would not have fallen within the pecuniary jurisdiction of the Ward Tribunal, which is limited to Tshs. 3 Million.

On the reliefs, counsel submitted that the Ward Tribunal ordered, *inter alia*, that 10% of the damages be paid to it (the Ward Tribunal). He was of the view that such award had no legal basis and could show some bias on the part of the Tribunal. On those grounds, he prayed for the court to nullify all proceedings in the Ward Tribunal and the District Land Tribunal.

On his part, Mr. Dadaya, learned advocate, agreed with Mr. Msalenge on the issue of *locus standi*, in that the appellant had no *locus standi* to file the case. On pecuniary jurisdiction, Mr. Dadaya opined that since there is no evidence on the value of the property, it cannot be rightly argued that the Ward Tribunal had no pecuniary jurisdiction.

Mr. Dadaya was also of the view that Ward Tribunal's order to be paid 10% of the damages cannot be challenged at this stage because we do not know the reasons for the Ward Tribunal to make such order. He prayed for costs both in this court and the lower tribunals.

The issues for determination are: **One**, whether the appellant had *locus standi* to commence the suit at the Ward Tribunal; **two**, whether the Ward Tribunal had pecuniary jurisdiction to entertain the matter; and **three**, whether the Ward Tribunal's order requiring payment to it of 10% of the damages was proper.

On the first issue, both parties agree that the appellant had no *locus standi* to file the suit at the Ward Tribunal. It is not in dispute that the appellant filed the claim on behalf of the estate of a deceased person (his late father) and that it was only the person appointed as the administrator of his estate who ought to have commenced the suit. I agree with counsel on this issue. The law as it now stands is that a claim for and on behalf of the deceased may only be instituted by the administrator of estate. I took the same position in **Zuhura Bakari Mnutu v Ali Athumani** (*supra*).

In the present case, the claim was commenced by the appellant at the Ward Tribunal of Mtonya. His claim read as follows:

Namlalamikia ndg (1) ADAMU BARAZA na (2) FADINA BARAZA mkazi wa Majengo kwa kosa la kunidhulumu eneo la uwanja wa marehemu baba.

The appellant, while recognising that the suit land belonged to his late father, nonetheless instituted the matter in his personal capacity. That is contrary to the principles governing *locus standi* as highlighted above. This point alone is sufficient to nullify the entire proceedings of the lower Tribunals. However, I will address in brief the other two issues, if only to provide guidance in future cases on how the issues may be handled.

In determining the pecuniary value for purpose of the court's jurisdiction, the court begins with the estimated value pleaded by a party in his pleadings, notwithstanding the absence of the valuation report on the suit property. In our case the appellant's claim filed at the Ward Tribunal further reads:

"Huwo uwanja ulikuwa na nyumba, minazi 4. Pia upo katika eneo la Majengo na unathamani ya shilingi milioni 15,000,0000/="

Therefore, in determining the pecuniary jurisdiction, the courts look at what is pleaded in the claim, on the assumption that what is pleaded therein is true. The stated value of the property in dispute, according to the claimant, is Tshs. fifteen million (15,000,0000/=) which is beyond the pecuniary jurisdiction of the Ward Tribunal, per section 15 of the Land Disputes Courts Act, Cap 216 (R.E. 2002), which provides:

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.

I therefore agree with Mr. Msalenge that the appellant's claim would also have collapsed on the ground of pecuniary jurisdiction because the Ward Tribunal had no such jurisdiction to entertain the matter.

On the issue of the Ward Tribunal's order of payment of 10% of the damages awarded, I would agree with Mr. Msalenge that the Tribunal erred. Even though, as Mr. Dadaya contended, we do not know why the Tribunal made such order, the mere fact that such an order was made is utterly wrong. There is no law in our country that empowers a Court of law or a Tribunal deciding on the rights and liabilities of parties before it to charge a percentage of the damages assessed—whether in terms of fees or otherwise. To allow for such a practice would create a dangerous precedent, by which Courts and Tribunals will hold a stake in the outcome of the case and enjoy the financial fruits of its own decree, and worse still, where the higher the reward the greater the court's share! This point needs to be stressed and known to all lower Courts and Tribunals.

However, the fact that such an order has been made may be an indication of a serious problem with regard to the sources of funds for the operation of these Tribunals. There is need for the government to consider the possibility of providing funds for the operation of the Tribunals to ensure their efficiency in the determination of disputes, and also to avoid the tendency to seek for alternative ways (including unlawful ones as happened in this case) to finance their activities.

Given my findings on the issues of jurisdiction and *locus standi*, the proceedings, decisions and orders of both the lower Tribunals cannot be left to stand. They are accordingly nullified.

As for costs, I feel that the circumstances do not call for an order for costs in favour of any of the parties. While the proceedings were commenced by the appellant, thus compelling the respondent to incur costs, it was the appellant's own advocate who raised the issues that ultimately led to the nullification of the entire proceedings. Invoking this Court's discretion, therefore, I shall make no orders as to costs.

DATED and DELIVERED at Mtwara this 30th day of November, 2016.

F.A. Twaib
Judge