

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPEAL NO.86 of 2017**

*(From the decision of the District Land and Housing Tribunal of  
KINONDONI in Land Appeal No. 20 of 2015 and original Ward  
Tribunal of MSIGANI in Complaint No. 193 of 2015]*

**TAHONA RAPHAEL SHEMAPEMBA.....APPELLANT**

**VERSUS**

**MABULA MISUNGWI.....RESPONDENT**

***Date of Last Order: 31.05.2018***

***Date of Judgment: 13.07.2018***

**JUDGMENT**

**S.A.N WAMBURA, J:**

Aggrieved by the decision of the District Land and Housing Tribunal of Kinondoni in Land Appeal No. 20 of 2015 which sustained the decision of Msigani Ward Tribunal the appellant **Tahona Raphael Shempemba** has filed five grounds of appeal being:-

- 1. That the District Land and Housing Tribunal erred in law and fact to hold that the Ward Tribunal within the Kinondoni Municipality Council had jurisdiction to entertain the matter.*
- 2. That, the District Land and Housing Tribunal erred in law and fact to hold that the Ward Tribunal had the pecuniary*

*jurisdiction to entertain the matter while the amount of compensation claimed by the appellant exceeded three million shillings.*

- 3. That the District Land and Housing Tribunal erred in law and fact when it continued to disregard the existence of an oral contract having a legal force which existed between the appellant and the parties.*
- 4. That the District Land and Housing Tribunal misdirect fact to disregard at all the evidence of the appellant's witness.*
- 5. That the District Land and Housing Tribunal erred in law when it consider the respondent evidence of no. 68 and 69 in the proceeding to which ended in giving wrong judgment.*

He thus prayed that the said decision be quashed and the appeal be upheld with costs.

In their reply to the Petition of Appeal the respondent **Mabula Misungwi** challenged the appeal praying for its dismissal with costs.

It is on record that having heard both parties and their witnesses, the Ward Tribunal also visited the suit premises. The trial

Ward Tribunal found in favour of the respondent and declared him as the lawful owner of the suit premises.

Aggrieved by the said decision the appellant therein appealed to the District Land and Housing Tribunal. It sustained the decision of the trial Ward Tribunal and dismissed the appeal.

At the hearing of this appeal both parties appeared in person unrepresented.

The court thus granted leave for hearing of the appeal to proceed by way of written submissions. I thank both parties for adhering to the schedule.

Now having gone through the grounds of the appeal as well as the records of the trial Ward tribunal and the submissions from both parties, this court observes that the main issue to be determined is whether the trial Tribunal properly evaluated the evidence on record before arriving at its decision.

On the first ground of appeal, it is my considered view that the same lacks merit. My reason for the same is that first of all the

authorities cited in support of this ground are only persuasive hence I am not bound by them. I therefore in that regard, wish to differ with the reasoning of my sister Hon. Ngwala J. for the reason that jurisdiction or powers and procedures of the Ward Tribunals are provided for under Section 8 of the Ward Tribunals Act Cap. 206 R.E. 2002 and Section 10(1) of the Land Disputes Courts Act, Cap. 216 R.E 2002.

Moreover Section 13(2) of the Land Disputes Court Act Cap. 216 R.E. 2002 provides that; I quote;

*" (2) Without prejudice to the generality of subsection (1), the Tribunal shall have jurisdiction to enquire into and determine disputes arising under the Land Act, 1999 and the Village Land Act 1999."*

It is my belief that from the provisions cited above the legislature did not intend the ward tribunals found in towns and cities to be stripped off the powers to determine land disputes arising in their areas because they are there by virtue of the law, their locations notwithstanding.

In the circumstances the Ward Tribunals situated in the cities, Municipalities or Township do have jurisdiction to entertain Land Disputes, in their capacity as tribunals under Section 10(1) of the Land Disputes Courts Acts Cap. 216 2002.

With regard to the second ground of appeal, I entirely agree with the findings of the learned Chairman that there was no valuation report tendered by the appellant to prove that the suit premises was above the pecuniary jurisdiction of the trial Ward Tribunal. It is on the record that the appellant was the one who sued the respondent, hence it is absurd for him to raise the issue of pecuniary jurisdiction now while he was the one who instituted the suit at the trial Ward tribunal.

But again the pecuniary jurisdiction is not determined by considering the amount of compensation claimed but value of the subject matter. The compensation claimed can exceed the value of the subject matter, but that cannot be said to be the determining factor of the pecuniary jurisdiction.

Thus this ground of appeal also fails.

On the third, fourth and fifth grounds of appeal, this court finds that there was no contract tendered by the appellant at the trial tribunal to prove the existence of lease or construction contract.

The appellant alleged that there was an oral agreement entered between him and the respondent however there were no witnesses called upon by the appellant to prove on the same.

It is a cardinal principal of law under the Law of Evidence Act Cap.6 R.E. 2002 that whoever desires a court to give judgment in his his/her favour; he/she must prove that those facts exist.

**Section 110 (1) (2) of the Law of Evidence Act Cap. 16 R.E.2002** reads as follows, I quote;

*"Section 110(1) 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.*

*Section 110(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".*

[Emphasis mine].

The above provision places the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain. See the case of **ABDUL KARIM HAJI VS RAYMOND NCHIMBI ALOIS AND ANOTHER**, Civil Appeal No. 99 of 2004 (unreported).

It is from the above evidence, this court finds no justifiable reasons to disturb the finding of facts of the Lower Tribunals. The decision of the District Land and Housing Tribunal of Kinondoni in Land Appeal No. 20 of 2015 is upheld.

The appeal is accordingly dismissed with costs.

**S.A.N. WAMBURA**  
**JUDGE**  
**13.07.2018**