

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND CASE APPEAL NO. 10 OF 2020

MENEJA, KIWANDA CHA SARUJI WAZO APPELLANT

VERSUS

HERMELINDA JOSEPH BIKONGORO RESPONDENT

(Appeal from the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala originating from the decision of the Wazo Ward Tribunal in Land Case No. 208 of 2016)

Dated the 18th day of July, 2018

in

Appeal No. 157 of 2017

JUDGMENT

S.M. KALUNDE, J.:

This is an appeal from the judgment of the District Land and Housing Tribunal for Kinondoni ("**the DLHT**") in **Appeal No. 56 of 2017** delivered on the 18th day of July, 2018 in favour of the respondents. The appellant being aggrieved by the findings and decision of the tribunal filed this appeal.

In 2016, before the Wazo Ward Tribunal ("**the tribunal**"), one HERMELINDA JOSEPH BIKONGORO, the Applicant (now respondent) sued the appellant claiming for ownership of a parcel of land approximately one acre in size situated at Wazo Tegeta within Kinondoni Municipality ("**the suit land**") he claimed to have inherited the farm from her late father. The suit at the ward tribunal was registered as **Land Case No. 208 of 2016**.

The respondent case at the trial Ward Tribunal was that, she was given that piece of land by his late father Joseph Bikongoro. She alleged that one of the guards in the farm informed her that the appellants had trespassed into, and were about to dispose of the land. One of the respondent's witness, Israel Elias Makofi, informed the tribunal that the suit land belonged to the respondent's father for more than 30 years where he had planted mangoes and coconut trees.

On the other hand, the appellants claimed that the suit land was the property of Twiga Cement since 1993. One the appellants witnesses, Mr. Coronery Serikali Kasesa, testified that Twiga Cement involved the Ministry of Land and Human Settlement and the local authorities in the acquisition of the land. He contended that an evaluation was conducted, and all residents were compensated and eventually the land was allocated to Twiga Cement.

The Wazo Ward Tribunal found that the evidence adduced by the respondent before it was not sufficient, it entered judgment in favour of the appellant and dismissed the respondents' claims. It also declared the appellant to be the lawful owner of the suit property. The respondent was aggrieved by the decision of the ward tribunal, she appealed to the Kinondoni DLHT. In summary, before the DLHT, the respondent preferred the following grounds:

1. That the trial tribunal erred in law to try the matter in which it has no jurisdiction to entertain;
2. That the trial tribunal erred in law and facts by allowing Hamis Ramadhani Kazyaba to act for Twiga Cement Company without presenting any authorization;

3. That the trial tribunal erred in the assessment of the evidence and facts by disregarding the evidence adduced by the applicant witnesses;
4. That the trial tribunal erred in law and fact by denying the Applicant the order restraining the Village and other intruders from interfering with its possession of the land;
5. That the trial tribunal through the chairman erred in law and facts by refusing to accept two witnesses of the Applicant.

Upon deliberations the tribunal allowed the appeal. Consequently, the judgment and award of the Wazo Ward Tribunal was quashed and set aside. The respondent was declared the lawful owner. This time it was the appellants who were aggrieved by the decision of the Tribunal and hence the present appeal.

Before this Court, the appellant was represented by **Tumaini Michael** learned advocated, whereas the respondent enjoyed the legal representation of **Mr. Cyril Pesha** learned advocated. The learned counsel for the appellant filed a seven (7) point memorandum of appeal. Those grounds, in my view, may be summarized into the following main complaints:-

1. That the DLHT erred in law and fact in failing to make a finding that the decision of the Ward Tribunal is illegal for lack of requisite jurisdiction;
2. That being the first Appellate Court, the DLHT failed in its duties where it failed to rehear the evidence;
3. That the Tribunal erred in law and fat in failing to properly examine and evaluate evidence on

record thereby arriving at the wrong conclusion;

4. That the decision of the DLHT lacks evidence and reasons to support the findings; and
5. That the DLHT erred in failing to make a finding that the Respondent had no capacity to institute and prosecute the proceedings in question for lack of *locus standi*.

I granted leave that the appeal be argued by way of written submissions. In compliance with that order, submissions of the appellant were drafted and filed by **Mr. Tumaini** whereas those of the respondent were drafted by **Mr. Cyril Pasha**. Both parties filed their respective submissions within the timeline issued by the Court. However, the appellant did not file a rejoinder.

It would appear that, both at the DLHT and before this Court, the jurisdiction of the ward tribunal in entertaining the present suit was placed under scrutiny. That being case, I gather it would be judicious for this Court to address the question of jurisdiction first before delving into other grounds of appeal advanced by the appellant.

The ward tribunal had an opportunity to visit the locus in quo and measured the suit land to be equal to **115 x 132 x 106 x 15 x 28 x 140 paces**. In her argument, before the DLHT, the respondent, who was questioning the jurisdiction of the ward tribunal, was that the above size of the translated to almost one (1) acre of land. Given that the land was located at Wazo Hill, Kinondoni Municipality in the defunct city of Dar es Salaam, she reason that the value was far higher than the jurisdiction of the ward tribunal which, in accordance with **section 15 of the Land Disputes Courts Act, Cap. 216. R.E. 2019**, was capped at three (3) million. She argued that tribunal should have ascertained whether it had jurisdiction to entertain the matter.

On their part, the appellants argued that it was the respondent who filed the suit hence she must have been aware of the estimated value of the suit property. They added that the respondent had not indicated the value of the property before the Ward Tribunal and therefore she was precluded from raising the issue at appellate level. The appellants maintained that the ward tribunal had jurisdiction.

In its judgment the Chairman of the DLHT reasoned that the respondent, and appellant then, ought to have attached the valuation report to prove that the value of the suit property was above three (3) million. He added that the location of the subject matter did not justify the value of the subject matter to be above three (3) million. In arriving at the above reasoning the DLHT was influenced by the decision in **Zaid Baraka vs. Engen Petroleum Tanzania Limited**, Land Case No. 135 of 2004. In view of the fact that an evaluation report was not attached to ascertain the value of the suit property, the chairman of the tribunal concluded that the ward tribunal had jurisdiction.

This issue was raised for the second time before this Court. Admittedly, the question of jurisdiction can be raised at any stage, even during a second appeal, more specifically when the appellant feels the issue was not adequately dealt with at the first appellate tribunal.

In support of the argument Mr. Tumaini argued that the suit land, being located at a prime area in Wazo Hill, Tegeta within Kinondoni Municipality and the City of Dar es Salaam, fetched a far higher value than that would otherwise be entertained by the ward tribunal. He maintained a view that, it was wrong for the DLHT to insist on a valuation report when even price ranges issued by the Ministry of Land and Human settlement could be consulted. To support his view he cited the case of **Shyam and others v New Palace Hotel Ltd** (No 2) [1972] 1 EA 199 (CAD)

In response, the respondent argued that the appellant did not raise the question of jurisdiction at the ward tribunal, thus he was precluded from raising it at the appellate level. He argued that the appellant had provided an argument to support a departure from the decision in **Zaid Baraka vs. Engen Petroleum** (supra). Further to that the respondent argued that the decision in **Shyam and others v New Palace Hotel** (supra) was not applicable in the present case. He prayed that the appeal be dismissed with costs.

In rejoining the appellant cited the case of **M/S Tanzania- China Friendship vs. Our Lady of the Usambara Sisters** [2006] TLR 70 to support a view that the question of jurisdiction can be raised at any stage even at the appellate stage.

On the basis of the above rival arguments, the germane issue now is whether or not the ward tribunal had the requisite pecuniary jurisdiction to entertain the present suit. The best point to start would be to make an enquiry into the jurisdiction of the ward tribunal in land matters. The jurisdiction of the ward tribunal in relation to land matters is set out under section 15 of Cap. 216. The section reads:

*"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 added]*

In view of the above section the ward tribunal may entertain land matters in which the value of the subject matter is not more than three million shillings. Where the value exceeds three million shillings, that matter falls outside the purview of the ward tribunal.

Since it determines the authority of a particular court or tribunal to entertain the application, jurisdiction cannot be presumed, it must be ascertained; and the court or tribunal to which the matter is placed must be certain, at least based on the pleadings and proceedings before it, that it has jurisdiction to entertain the matter. In order to do that the law has placed an obligation to litigants to make sure they provide the relevant facts giving jurisdiction to the court or tribunal. The relevant provisions providing for this obligation are those setting out the specific pecuniary jurisdiction of the court or tribunal and those related to pleadings.

The importance and relevance of the trial court to ascertain its jurisdiction was stated in **Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda and 2 Others** [1995] TLR 155 (CA) where the Court stated thus:

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. **In our considered view, the question of jurisdiction is so fundamental that the courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. This should be done from the pleadings. The reason for this is that it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case.**" [Emphasis added]*

The take away from the above case law is that, the jurisdiction of the court or tribunal must be apparent on the face of records before the tribunal and not a matter of evidence to be gathered at the trial.

In the present case it was in dispute that the suit land was a piece of land measuring 115 x 132 x 106 x 15 x 28 x 140 paces, located at Wazo Hill, Tegeta within Kinondoni Municipality. However, there was nothing in the pleadings before the ward tribunal suggest the value subject matter or even to show that the chairman of the ward tribunal attempted to make an enquiry into the jurisdiction of the tribunal. Conversely, the tribunal proceeded to hear the parties, visited the site and made observations as to the size of the suit land. In my view, when the size and location of the suit land was determined the tribunal should have reflected on whether or not it had jurisdiction to entertain the matter. But that was not to be the case.

The first appellate tribunal reasoned that, since the respondent had not attached a valuation report to establish the value of the subject matter the ward tribunal was justified in proceeding to hear the matter. With respect to the chairman, I think that view is misconceived, first there is nowhere that the applicant had stated that the value of the property was three million, it would therefore appear that the ward tribunal had presumed that the suit land was, in fact, valued at three million shillings. The respondent argued that the appellants had not raised the issue at the ward tribunal, therefore he was precluded from raising it at this stage. Unfortunately, parties cannot confer jurisdiction to a court or tribunal by their agreement. To this view, I am supported by the decision of the defunct East African Court of Appeal in **Shyam and others v New Palace Hotel** (supra) where the Court held that:

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot

by consent give a court jurisdiction which it does not possess.”

Secondly, a valuation is not a legal or mandatory requirement in ascertaining the value of the subject matter. Ordinarily the law require parties to present facts establishing that the relevant court or tribunal has jurisdiction. Where no specific facts are pleaded, the court is placed with a judicial duty to examine the pleadings and proceedings before it to establish the value of the suit property. In the present case, even with the absence of the valuation report the tribunal had other means to ascertain the value of the subject matter such means included a consideration of the physical features of the land such as the location, size, landscaping and structures. Other aspects related to location is its proximity to useful facilities such infrastructure, social services or business activities. Other considerations are whether the land is surveyed or otherwise, pricing as based on market conditions, the development or investment injected onto the land, example agricultural activities; and category of designated land use, be it residential, commercial, conservation or other purposes. But most importantly is whether the disputed land is a registered land or not. The chairman of the tribunal cannot be oblivious of these consideration based on an argument that there is no valuation report. That would be a dangerous precedent to set as individuals would starve and overload appropriate forums defeating the ends of justice and rationale of the concept of pecuniary jurisdiction.

It is on record that the size of the land is 115 x 132 x 106 x 15 x 28 x 140 paces. Given its size and location, and considering that there were coconut trees planted on the site, which were unfortunately, never counted, it is clear that the value of the said land was beyond the jurisdiction of the ward tribunal. On top of that the appellant had insisted that the suit land was part of a certificate of title granted to

him by the relevant authorities, that consideration alone, would have been sufficient to raise the eyebrows of the ward tribunal.


In my view, the pleadings and proceedings before the Learned Trial Chairman were enough for him to scrutinize the question of jurisdiction and confirm whether or not he had the essential pecuniary jurisdiction. It did not do so, and as a result it proceeded without the requisite mandate. As a result the ward tribunal had assumed jurisdiction which it did not have.

That said, it is apparent that the trial tribunal lacked the pecuniary jurisdiction to entertain the matter; and consequently, the judgment and proceedings before the ward tribunal are null and void. Now that, the ward tribunal's proceedings are a nullity, it follows that the appeal before the District Land and Housing Tribunal was equally null and void; and it is as if there was no appeal at all. This ground alone is sufficient to dispose of the entire appeal, and for that matter I will not proceed to the remaining grounds of appeal.

For these reasons, I allow the appeal and set aside the judgment and decree of the ward tribunal and that of the DLHT. The parties are liberty to institute a fresh suit, if they are so interested, in a court or tribunal with the requisite jurisdiction. The appellant is to have his costs.

It is so ordered.

DATED at DAR ES SALAAM this 21th day of MAY, 2021.


S. M. KALUNDE
JUDGE

