

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

LAND APPEAL CASE NO. 217 OF 2020

FRANCIS JACOB MUSHI1ST APPELLANT
AUGUSTINO AYISHASHE 2ND APPELLANT
WILLIAM MUTATEMBWA 3RD APPEALANT

VERSUS

ALICE JOHN MNDOLWA 1ST RESPONDENT
FRANCIS BERNARD MNDOLWA 2ND RESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

The above named Appellants were aggrieved by the Ruling of the District Land & Housing Tribunal for Kinondoni at Mwananyamala before Hon. Lung'wecha M, Chairman, dated 18th September, 2020 in Application No. 514 of 2018. The ruling followed preliminary objections on point of law which were raised by the then 2nd to 4th Respondent (the applicants herein). The objections were that:

- 1) This Tribunal lacks jurisdiction to entertain the matter as the Application does not have locus stand.
- 2) That the Applicant does not have any cause of action against 2nd, 3rd and 4th Respondents.

3) The application is incurably defective for lack of proper verification.

The tribunal overruled the first and second points of objection, sustaining the third point of objection while striking out the application. The appellants were purportedly aggrieved by the said decision and have lodged this appeal on the following grounds:

1. That the trial Chairman erred in law and fact by considering that the disputed property is a matrimonial property entitling the first Respondent to sue while well knowing that it had no jurisdiction to deal with matrimonial issues.
2. That the Chairman erred in law and facts by not considering the 2nd point of preliminary objection that the Applicant does not have any cause of action against the Appellants in Land Application No. 514 of 2018 as the disputed property was not a matrimonial home.

On the above grounds, the Appellants prayed that this Appeal be allowed, the trial Tribunal's Ruling and Drawn order be partly quashed with costs based on First and Second points of Preliminary Objections raised in Land Application No. 514 of 2018. On the 16/03/2021 when this matter came for mention, I asked the parties to address me on the competence of their appeal as the orders of the tribunal that the appeal is sought for did not bar a fresh application of the same nature. The appellants are particularly appealing against the decision of the tribunal overruling their objection, orders which did not finally determine the rights of parties therein.

In their submissions to support the issue, the appellants submitted that the tribunal had no jurisdiction to entertain matrimonial matter because the 1st

respondent herein is the wife of the first respondent. He continued to make other submissions on the substance of the appeal something which is not what I asked the appellants to address me therefore I will not waste time to discuss the submissions.

My issue of concern is that the tribunal overruled the 1st and 2nd objection on locus standi and cause of action of the 1st respondent herein. Hadn't there been a third objection, the tribunal would have proceeded to determine the application that was tabled before it. The question is therefore, whether an order of the court/tribunal overruling preliminary objections is appealable? The answer is no. This is backed by the provisions of Section 74(2) of the Civil Procedure Code, Cap. 33 R.E 2019 provides:

*(2) Notwithstanding the provisions of subsection (1), and subject to subsection (3), **no appeal shall lie against** or be made in respect of **any preliminary or interlocutory decision** or order of the District Court, Resident Magistrate's Court **or any other tribunal, unless such decision or order has effect of finally determining the suit.***

The question to be answered in this appeal is whether the said decision overruling the objection had a finality effect. As I said earlier, the part of the decision of the tribunal which appeal is sought for just determined that the appellant has a locus standi as wife of the then 1st respondent (2nd respondent herein) to bring an action on the ownership of the property. This locus is derived from her alleged interest in the land and the issue on whether the suit property was a matrimonial home or not was to be determined on merits. Therefore since the tribunal's order that this appeal

is sought for did not finally determine the appeal, under the provisions of Section 74(2) of the CPC, there is no appeal before me. The part of the appeal raised by the appellants herein is hereby dismissed.

On the other hand, the respondents have also lodged a cross appeal on one ground that the Chairman of the tribunal erred in law and fact by holding that the Land Disputes Court (District Land and Housing Tribunal) Regulations, GN No. 174/2003 ("The Regulations") have a lacuna on the applicability of the verification clause and invoking the provisions of the CPC. In their reply submissions to the appeal, the respondents argued that para 8 of Form No. 1 of the Regulations provides the format in which the verification of the application should be done. He invited the court to look at the verification clause in the applicant's application which reads:

"I Alice John Mndolwa, being the applicant in this case, hereby certify that what has been stated above is true to the best of my knowledge"

They then argued that there is no lacuna in verification clause as stipulated in the Form No. 1 mentioned above. He concluded that since there is no lacuna in the regulations, the Chairman erred in slashing out the application by upholding the third point of objection.

In their rejoinder, the appellants counter argued on the objection raised by the respondents. Their submission was that although there is indeed the Form No. 1, the verification clause in the said form is guided by the provisions of the CPC and that the 1st respondent's verification clause did not separate the paragraphs that disclosed the source of information as also required by the cited Form No. 1 and Rule 15 of Order VI of the CPC. That the paragraphs that were not in the applicant's knowledge were

identified but the 1st respondent avoided submitting on them. They concluded that the verification clause is incurably defective rendering the application before the tribunal incompetent.

Having considered the submissions, I had to revisit the Regulations and look at the contested Form No. 1. Indeed the Form has its own verification clause format and it reads:

"I, being the applicant/Advocate/Representative in this case, hereby certify that what has been stated above is true to the best of my knowledge/information supplied to me by....."

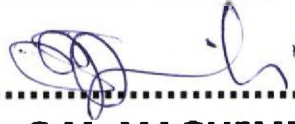
(Signed).

This is conclusive that there is no lacuna in the Regulations where the verification clause is concerned as there is a special format provided therein. However, from the above format of the Regulations in Form No. 1, I am in agreement with the argument raised by Ms. Gawile that the 1st respondent was duty bound to identify those paras which she had knowledge of and those which she averred from the information supplied to her by someone else. Although on the different grounds as explained above, in the absence of such information, the verification clause was still defective making the application incurably defective and stood to be struck out.

Having made the above findings, I find the cross objection raised by the respondents to be also lacking merits as well. In totality, the whole appeal is hereby dismissed for want of merits. Owing to the fact that

both the main appeal and the cross-objections were dismissed, each party shall bear its own costs.

Dated at Dar-es-salaam this 12th day of July, 2021.



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S.M. MAGHIMBI.
JUDGE.

