

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

MISCELLANEOUS LAND APPEAL NO. 30 OF 2021

(Arising from Mafia District Land and Housing Tribunal Land Appeal No. 2 of 2020)

MAKAME MAKESI.....APPLICANT

VERSUS

ZAITUNI MSOMI..... RESPONDENT

JUDGMENT

T.N. MWENEGOHA, J:

The appellant herein, being dissatisfied by the decision entered by the 1st Appellate Tribunal in the Land Appeal No. 2 of 2020 delivered by Mafia District Land and Housing Tribunal on 4th of February 2021 appealed to this court on the following grounds:

1. That the 1st Appellate Court erred in law and fact by failure to consider the fact that the Tribunal had no jurisdiction to determine the matter.
2. That the 1st Appellate Tribunal erred in law and fact by determining the Appeal without analyzing, evaluating the parties' arguments and considering the record or proceeding of the dispute from the Village Council and that of the Ward Tribunal prior coming to the final determination.

3. That the trial tribunal erred in law and fact to determine the appeal in favor of the respondent without any evidence proving as to how such respondent acquired the land in dispute.

Wherefore the Appellant pray for this honorable Court as hereunder:

- i. That the decision of the lower tribunals be quashed and set aside.
- ii. Allow the matter to be retried denove
- iii. Any other reliefs this honorable court may deem fit and just to grant.

When the matter came for mention on 18/8/2021 the appellant appeared in person while the respondent was presented by advocate Mark Lebba. Mr. Lebba submitted to this Court that the respondent does not intend to contest the appeal as he is in agreement with appellant that the trial court had no jurisdiction.

It was Mr. Lebba's submission that the value of the property is above the pecuniary of the Kinondoni Ward Tribunal, which determined Application No. 8 of 2020 from which the appellant appealed to Districts Land and Housing Tribunal of Mkuranga District, Appeal Number 2 of 2021 where the present appellant lost before referring this appeal.

He told the Court that the disputed property is valued at Tanzania shillings 4,645,000/- and both the appellant and respondent agree that it was beyond pecuniary jurisdiction of the Tribunal.

Mr. Lebba further submitted that even though newly engaged, he has read the file thoroughly and is satisfied on the jurisdiction issue. He noted that the issue was not raised during hearing at the Tribunal and reiterated that

the Tribunal has no jurisdiction. He further provided that as the issue of the Tribunal is first ground to this appeal and for the interest of justice, he does not intend to contest the appeal as he is in the agreement with the appellant as the issue of jurisdiction is paramount.

After considering the submissions of the parties and records on file, I am in agreement with the submission of the respondent that the issue of jurisdiction is paramount. I further agree that the trial tribunal had no jurisdiction to hear the matter as the jurisdiction of the Ward Tribunal is clearly stipulated under the law. Section 15 of the Land Disputes Courts Act, 2002 states:

"Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 1985, 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".

It is trite that the Court that hear and determine the case must have a jurisdictional base on which it caters upon. As the Ward Tribunal had no pecuniary jurisdiction, it had no mandate of adjudicating the matter and in the absence of such merits of the case as well as justice are affected.

The Ward Tribunal's proceedings were therefore null and void. Consequently, the District Land and Housing Tribunal proceedings can equally not stand as they are also null and void. Since the issue of jurisdiction has been found merited, I see no need to labor on the remaining advanced grounds of appeal.

In the circumstances I hereby quash and set aside decisions of both the District and Ward Tribunal. Parties are at liberty to re-institute the dispute in the tribunal with competent jurisdiction.

Each party to bear its own costs. It is so ordered.

Dated at Dar es Salaam this **30th** day of **August 2021.**

.....
T.N. MWENEGOHA

JUDGE

