

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

MISC.LAND APPEAL NO. 97 OF 2020

*(Arising from the District Land and Housing Tribunal for Kilosa in Land
Appeal No. 102 of 2014 Originating from Ruhembe Ward Tribunal)*

CONSOLATA LUKASI MAUMBA APPELLANT

VERSUS

MUSA PIUS LIAMKA 1ST RESPONDENT

ALLY SAID MGUNG'UNDE 2ND RESPONDENT

MOHAMED SAID MGUNG'UNDE 3RD RESPONDENT

MWANAIKI SHOMARI MOHAMEDI 4TH RESPONDENT

JUDGMENT

Date of last Order: 30.08.2021

Date of Judgment: 31.08.2021

A.Z.MGEYEKWA

This appeal is against the Judgment and Decree of the District Land and Housing Tribunal for Kilosa, in Land Appeal No. 102 of 2014 of 2018. The material background facts to the dispute are not difficult to comprehend. They go thus: in 2014, the appellant lodged a suit at

Ruhembe Ward Tribunal in Land Case No.4 of 2018 against the respondent calcimining for land ownership of a piece of land located Kifanga. The appellant claimed that her father acquired the suit land in 1960 by one Benjamin. She went on to state that she acquired the suit land after the death of his late father. She complained that the respondents invaded her suit land and constructed a fence. The appellant stated that she reported the matter before the Village Government and they decided in her favour. One Konrad Nestroy testified in favour of the appellant that he knew that the disputed land belongs to the appellant and she used the land for a long time without any disturbance. Another witness; Kostantino Laurendi Kihonda testified to the effect that the appellant is the lawful owner and the appellant's neighbours.

The second respondent, Bajkari Ally testified on behalf of other respondents. He claimed that the suit land belongs to him. One of the respondents' witnesses, Daudi Nguvumali testified that the respondents' grandfather occupied the suit land in 1951 and one Abias Patrick testified that he is among the member of the Ward Tribunal for Kifinga thus he denied to testify.

After the determination of the case, the trial tribunal decided in favour of the appellant. The Chairman declared the appellant the lawful owner of

the suit land. Being aggrieved with the tribunal decision, the respondents filed an appeal before the District Land and Housing Tribunal for Kilosa one of the grounds of appeal, the respondents complained that the trial tribunal had no jurisdiction to determine the suit. The appellate Chairman ordered additional evidence whereby Ally Salum Kinokino was called to testify and he testified that he was the Ex-Secretary of Ruhembe Ward Tribunal. He testified to the effect that Ruhembe Ward Tribunal entertained the matter because at that particular time Ruaha Ward Tribunal did not exist. The Chairman proceeded to compose a Judgment and ended up nullifying the decision of the Ruhembe Ward Tribunal for lack of jurisdiction. The matter was ordered to start afresh at a competent tribunal.

Aggrieved, the appellant came before and raised nine grounds of grievance, namely:-

1. That, the trial District Land and Housing Tribunal Chairman erred and in law and fact by issuing the judgment basing on of evidence of Ruhembe Ward Tribunal Secretary and Ruaha Ward Tribunal the witness which was called by tribunal chairman and called by parties.
2. That, the trial District Land and Housing Tribunal Chairman erred both in law and fact for considering that the Ruhembe Ward tribunal has no jurisdiction without any prove from respondents.

3. That, the trial District Land and Housing Tribunal Chairman erred both in law and fact for nullify the decision of the trial ward tribunal considering the evidence on records.
4. That, the trial District Land and Housing Tribunal Chairman erred in law and fact by wrong interpreting S. 10 (1) and S. 13 (1) of the land dispute Courts Act, No. 2 R.E. 2019 hence reach wrong decision.
5. That, the trial District Land and Housing Tribunal Chairman erred in law and fact by reaching the decision for required appellant herein to prove the appeal ground of jurisdiction while the duty of prove is for respondent herein who alleged the issue of jurisdiction and not appellant herein.
6. That, the trial District Land and Housing Tribunal Chairman erred in law and fact by ordering the party in the appeal to produce additional evidence from Ruaha and Ruhembe Ward Tribunal while the parties does not pray for that additional evidence from Ruaha and Ruhembe Ward Tribunal.
7. That, the trial District Land and Housing Tribunal Chairman erred in law and fact for assuming that the Ruhembe Ward Tribunal erred to entertain the suit on 2014.
8. That, the trial District Land and Housing Tribunal Chairman erred in law and fact for assuming and considering that Appeal No. 102 is

originated from Ruhembe Ward Tribunal Case No. 4 of 20218 which appellant is not party hence reach unfound decision.

9. That, the trial District Land and Housing Tribunal Chairman erred in law and fact for.

The merit of the appeal was addressed by way of written submissions. When the matter was called for hearing on 19th April, 2021, By Court order the appellant filed his submission in chief on 5th May,, 2021 and the respondent's filed a reply on 2nd June, 2021. The appellant's Advocate filed a rejoinder on 7th June, 2021.

Supporting the appeal, the appellant opted to combine and argue the fourth and seventh grounds together and first, second, third, fifth, sixth, and eighth grounds of appeal together. The learned counsel for the appellant started to submit on the fourth and seventh grounds, which related to jurisdiction of the tribunal. The learned counsel claimed that in 2014 a Ward Tribunal was not established at Ruaha and all land cases were determined at Ruhembe Ward Tribunal. To support her submission she referred this court to the testimony of Ally Kinokino who was summoned by the appellate tribunal to give additional evidence. He went on to state that the Ruaha Ward AND Ruhembe Ward were allocated within Kilosa District within Kilosa District Council. The appellant claimed that the law does not prohibit an aggrieved party to file a land case in the

nearest Ward Tribunal if there is no Ward Tribunal within the disputed area. She referred this court to section 10 (1) of the Land Dispute Courts Act, No. 2 [R.E 2019]. She lamented that the appellate Chairman faulted himself for interpreting that it is mandatory to lodge a dispute within the ward tribunal where the dispute occurred while the law requires one to institute a case in the District Council which established the Ward Tribunal. To support her submission she cited section 10 (2) of the Land Disputes Courts Act.

The appellant went on to claim that the issue of jurisdiction was not raised at the trial tribunal whereby the appellant informed the trial tribunal that the suit land was located at Kifinga Village at Ruaha Ward Tribunal within Kilosa District. It was her view that the respondents did find that an issue because a tribunal was not existing at Ruaha Ward in 2014 and all land cases were lodged at Ruhembe Ward Tribunal. To fortify her submission she cited the cases of **Tadei Kapinga v Florence Kiangilo**, Land Appeal No, 56 of 2018 HC Land Division (unreported) and **Makori Wassaga v Joshua Mwaikambo and Another** [1987] TLR 88.

Arguing for the first, second, third, fifth, sixth, and eighth grounds, the appellant contended that the Chairman erred in law and fact for reopening additional evidence on the issue of geographical jurisdiction of Ward Tribunal and called upon Ally Salum Kinokino from Ruhembe ward

Tribunal and Jonas John Malima from Ruaha Ward Tribunal to testify on the issue of jurisdiction. The appellant complained that the respondents did not prove their allegations. To support her submission she cited section 110 (1) and (2) of the Law of Evidence Act, Cap. 6 [R.E 2019].

On the strength of the above submission. The appellant beckoned upon this court to allow the appeal with costs.

In reply, the respondents were brief and straight to the point. They claimed that the appellate Chairman in his judgment focused on the eighth ground of appeal that Ruhembe Ward Tribunal had no jurisdiction to determine the case. They disputed that Ruhembe Ward Tribunal had jurisdiction to handle the land dispute located with Ruaha Ward Tribunal. Insisting, they claimed that the suit land located within Ruaha Ward and the Ruaha Ward Tribunal is the only tribunal vested with jurisdiction to try the matter. The respondents went on to state that the issue of jurisdiction goes to the root of the matter. They added that section 10 (1) of the Land Disputes Courts Act, Cap. 216 states that the Ward Tribunals in Tanzania are established under the Ward Tribunal Act. They also referred this court to section 13 (1) of the Act and submitted that the appellate Tribunal was correct in nullifying the proceedings of Ruhembe Ward Tribunal because it had no territorial jurisdiction over the land situated in Ruaha Ward.

On the strength of the above submission, the respondents urged this court to dismiss the appeal with costs.

In his rejoinder, the appellant reiterated her submission in chief. The appellant further claimed that the respondents filed their reply out of time. She added that the respondents were ordered to file their reply on or before 1st June, 2021 but they filed the same on 2nd June, 2021 without obtaining leave of the court. Insisting, she stated that she lodged his case at Ruhembe Ward Tribunal only because the Ruaha Ward Tribunal was not established in 2014. To support her submission she cited the case of **Tanganyika Motors Limited & Four others v Behadurali Ebrahim Shamji**, Civil Application No. 65 of 2001 (unreported). In conclusion she urged this court to allow the appeal with costs.

Having heard the submissions of both parties for and against the appeal and after carefully going through the court records of District Land and Housing Tribunal for Kilosa, I have to say that the main issue *is whether the appeal is meritorious.*

Before I embark to determine the appeal on merit. I would like to address the appellant's concern that the respondents filed their reply on 1st June, 2021 instead of 2nd June, 2021. In short, without wasting the time of the court. I have to say as per the court records dated 19th April, 2021,

the respondents were ordered to file their reply on or before 2nd June, 2021, they have complied with the court order. Therefore, the cited case of **Tanganyika Motors Limited & Four others v Behadurali Ebrahim Shamji**, (supra) is distinguishable. This objection has no merit.

I have opted to address the fourth and seventh grounds that relate to jurisdiction of the Ward Tribunal to try the case, the same might dispose of the appeal. In order to satisfy himself on the issue of jurisdiction, the appellate Chairman summoned two witnesses one Ally Salum Kinokino who was the former secretary to the Ruaha Tribunal to give their evidence. The appellant complained that the appellate Chairman erred in law for determining the issue which was not raised at the trial tribunal. It is my considered view that the issue of jurisdiction can be raised at any time even during the appeal, In the case of **Adelina Koku Anifa & another v Byarugaba Alex**, Civil Appeal No. 46 of 2019 (unreported). This court could even in the absence of the grounds of appeal obliged to address the point of law on jurisdiction. Since this court had a duty to take judicial notice of matters relevant to the case even when the matter is not raised in the memorandum of appeal. Therefore, for that reason, I am not in accord with the appellant's submission that the issue of jurisdiction was not supposed to be raised during appeal.

In the case of **Marwa Mahende v Republic** (1998) TLR 249 the court is reminded of its duty to ensure proper application of the laws by the courts below. The Court of Appeal of Tanzania in the case of **Adelina Koku Anifa** (supra) went on to state that:-

"..the court cannot justifiably close its eyes on such glaring illegality because it is his duty to ensure proper application of the laws by the subordinate courts and/or tribunals.."

Guided by the above authorities of the law, I was forethought for the appellate tribunal to address and determine the issue of jurisdiction. I am saying this because in case the point of law could not have been raised now, the same could have been raised in later stages. Thus, I had to go through the appellate tribunal records to find out whether the appellant's fourth and seventh grounds are meritorious. It is evident that the witness testified to the effect that the appellant lodged a case at Ruhembe Ward Tribunal because in 2014 there was no any tribunal that was established at the Ruaha Ward. The purpose of gathering additional evidence was to ascertain whether in 2014 there was a tribunal established in Ruaha Ward or not. I fully subscribe to the appellant's submission that the Chairman erred himself in determining the evidence on record. In his judgment, the appellate Chairman acknowledged that Ally Kinokino testified to the effect that in 2014 there was no any Tribunal in Ruaha Ward, however,

astonishingly he went on and decided that there was a tribunal in Ruaha Ward without giving any reason why he departed from the witness testimony. The Chairman after obtaining additional evidence he was support to consider the evidence on record to reach a fair decision. But that was not the case. Therefore for that reason, I am in accord with the appellant that as long as one Ally Kinokoni testified and confirmed that in 2014 a tribunal was not established at Ruaha Ward, his evidence was required to guide the tribunal in reaching his decision.

I find that the evidence on record and failure for the respondents to prove that a tribunal was established at Ruaha in 2014 means the appellant's submission and her witness Ally Kinokoni were correct to say that the case before Ruhembe Ward Tribunal was legally lodged. Therefore this ground of appeal has merit. I am in accord with the appellant's submission that the respondents were required to prove their allegations as stated in the case of **Abdul Karim Haji v Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (unreported) the Court of Appeal of Tanzania held that:-

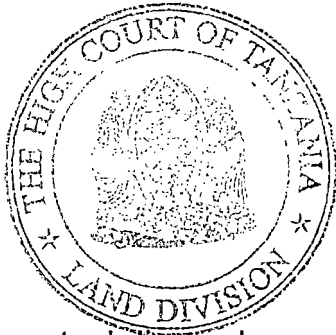
"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Applying the above authority of the law, I do not think the respondents proved their claims to the required standard of the law.

For the aforesaid reasons, I am satisfied that, in the instant appeal, there are extraordinary circumstances that require me to interfere with the District Land and Housing Tribunal for Kilosa's findings. Therefore, I find that this appeal has merit. I shall not consider the remaining grounds of appeal because the same was not determined by the appellate tribunal therefore doing so will be an academic exercise. Therefore, I proceed to quash and set aside the appellate tribunal proceedings and Judgment and upheld the decision of the trial tribunal without costs.

Order accordingly.

Dated at Dar es Salaam this date 31st August, 2021.

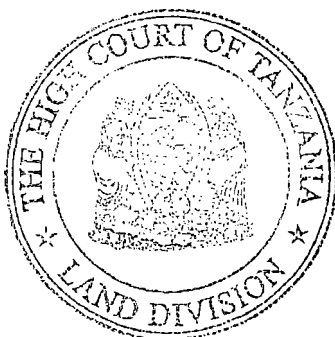



A.Z.MGEYEKWA

JUDGE

11.08.2021

Judgment delivered on 11th August, 2021 via audio teleconference whereas both parties were remotely present.




A.Z.MGEYEKWA

JUDGE

11.08.2021

Right of Appeal fully explained.