

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 98 OF 2020**

(Originating from Land Application No. 97 of 2012 from the District  
Land and Housing Tribunal for Ilala at Ilala)

**VERDIANA SAMWEL MUSHEMA ..... APPELLANT**

**VERSUS**

**VERONICA KIMEME ..... 1<sup>ST</sup> RESPONDENT**

**ROBIN KIMEME ..... 2<sup>ND</sup> RESPONDENT**

**MATILDA KIMEME ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

Date of Last order: 13.09.2021

Date of Judgment: 20.09.2021

**A.Z.MGEYEKWA, J**

This is the first appeal. At the centre of controversy between the parties to this appeal is a parcel of land located at Pugu Kajiungeni Kichangani Mpakani within Ilala District. The decision from which this appeal stems is the judgment of the District Land and Housing Tribunal for Ilala in Application No. 97 of 2012.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: the appellant claimed on 23<sup>rd</sup> July, 1993 she bought the disputed land of 21/2 acres from Theresia Mushi. She claimed that she was residing in Australia and left behind one Omari Dilunga who was a caretaker until 2011. The appellant claimed that on her return from abroad she went to inspect her farm she found that Dilunga has demolished the hut which he was living in. The appellant went on to claim that she met the respondents and they wanted to reconcile. Later, the appellant lodged a case at the District Land and Housing for Ilala seeking the tribunal to restrain the respondents from any interference and trespassing the disputed land, declare that she is the lawful owner of the disputed land and reconstruction on the guards' shelter. The District Land and Housing Tribunal for Ilala decided in favour of the respondent.

Believing the decision of the District Land and Housing Tribunal for Ilala was not correct, the appellant lodged an appeal containing one ground of appeal as follows:-

- 1. That, the Chairman erred in law and fact to hold that the District Land and Housing Tribunal for Ilala does not have jurisdiction while the disputed land is located at ilala.*

When the matter was called for hearing before this court on 02<sup>nd</sup> August, 2021, the appellant, 1<sup>st</sup> and 2<sup>nd</sup> respondents appeared in person. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant filed her submission in chief on 11<sup>th</sup> August, 2021. Whilst the appellant was to prefer his on or before 25<sup>th</sup> August, 2021, the respondents did not file their reply within time. They applied for extension of time, their prayer was granted and they filed their reply on 6<sup>th</sup> September, 2021. The appellant waived the right to file a rejoinder.

In his submission in support of the appeal, the appellant started with a brief background of the facts which led to the instant appeal which I am not going to reproduce in this appeal. Submitting on the ground of appeal the appellant argued that the Chairman erred in law and fact to rule out that the District Land and Housing Tribunal for Ilala had no jurisdiction to determine the case. The appellant contended that the farm is located at Pugu Station/ Kajiungeni at Ilala.

She went on to submit that during trial, she tendered documents to show that the farm is at Ilala Municipal including a letter from Ilala District Municipal Council with Ref. No. DSM/IL/111/14/41 dated 18<sup>th</sup> June, 2006 providing guidance to the appellant on how to complete the land

registration and survey, a letter with Ref. No. TP/01262/111/69 dated 12<sup>th</sup> April, 1999 from the Permanent Secretary Ministry of Lands instructed the appellant to contact the experts on the land survey process and a survey Form No.37 filed by the Land Officer at Ilala Municipal Council. To fortify her submission, the appellant referred this court to section 13 of the Civil Procedure Code Cap.33 [R.E 2019] which state that:-

*“ Every suit should be instituted in the Court of the lowest grade competent to try.”*

She also referred this court to section 22 (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] which state that:-

*“ The Court established under subsection (1) shall exercise jurisdiction within the district, region or zone in which it is established.”*

Relying on the above provisions of law, the appellant went on to submit that the farm in dispute is located at Pugu Station/ Kajiungeni which is within Ilala district hence, the trial tribunal had jurisdiction to entertain the case.

On the strength of the above submission, the appellant urged this court to allow the appeal and quash the judgment of the District Land and Housing Tribunal for Ilala and order re-trial.

Responding, the respondents were brief and straight to the point. They argued that the ground of appeal is misconceived. They submitted that the appellant filed a Land Application No. 97 of 2012 before the District Land and Housing Tribunal for Ilala. They submitted that the appellant claimed ownership of land and his case was dismissed on 28<sup>th</sup> August, 2017 for want of jurisdiction. They further submitted that despite the fact that the appellant was aware that there was another Land Case No. 96 of 2013 at this court. The parties were African Animals (T) Ltd v Prisca Kimeme and 6 others before Hon. Mgonya, J and the judgment was entered in favour of the defendants. The respondents valiantly contended that the pecuniary jurisdiction is far beyond to be entertained by the tribunal.

On the strength of the above submission, they stated that the appeal has been taken by event. They beckoned upon this court to dismiss it with costs.

Having summarized the submissions by the appellant, I am now in the position to determine the ground of appeal before me. The appellant has brought one ground that relates to the jurisdiction of the tribunal. The appellant in her submission was certain that the District Land and Housing Tribunal for Ilala had jurisdiction to determine the case. On the other hand, the respondents valiantly opposed the ground of appeal by stating that a similar matter was decided by this court and the District Land and Housing Tribunal was not vested with pecuniary jurisdiction to try the matter.

It is settled that whenever the suit is made before the court of law, the initial issue is to decide whether the court has jurisdiction to deal with the matter or not. The basis to determine jurisdiction includes fiscal value, geographical boundaries, and the subject matter. In the case of **Sospeter Kahindi v Mbeshi Mashani**, Civil Appeal No.56 of 2017 (unreported) the Court of Appeal of Tanzania held that:-

*"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision."*

Applying the above authority, it is an elementary principle of law that parties cannot consent to give a court jurisdiction which it does not possess. Reading the tribunal records I have noted that the Chairman

determined the matter and reached a conclusion that the suit land as per Title Deed (Exh. D) is located at Pugu, Kisarawe District. The correspondence was made at Ilala District and the Land Officer who attend the appellant matter was from Ilala Municipal Council. However the same does not debase the fact that the disputed land is allocated at Pugu, Kisarawe District contrary to what the appellant believes.

Reading the tribunal's judgment, the issue is concerning the place where the suit property is situated and in the matter, at hand, the document reads Certificate of Title No. 15076 land 106 acres at Pugu, Kisarawe District. PW2, Hadija Ali Mlulu, Land Officer testified to the effect that the suit land bears Title Deed No. 15076, 1006 acres located at Pugu area at Kisarawe District. She testified further that the ownership of the suit land was never transferred thus, the owners are Nassoro Mohamed and Patrick Tubuke Kimeme.

I have scrutinized exhibit P2, it is a caveat filed by the appellant in regard to suit land with a Certificate of Title No. 15076 with 106 acres located at Pugu, Kisarawe District which is the same suit land in dispute. Therefore the evidence on record reveals that the suit land is located at Pugu, Kisarawe District. I fully subscribe to the District Land and Housing

Tribunal for Ilala that she could not proceed to determine the case since the tribunal had no jurisdiction.

The question of jurisdiction is so fundamental that courts as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is perilous for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case. It is noteworthy that jurisdiction of a court is basic, it goes to the root of the authority of the court to adjudicate upon cases. The same was observed in the case of **Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda** [1995] TLR 159.

For the aforesaid reasons, I am not in accord with the appellant that the suit land is situated at Pugu Station/ Kajiungeni which is within Ilala District, her allegations are not supported by any documentary evidence. Therefore, I do not find any reason to discuss this matter in length because it is crystal clear that the geographical jurisdiction was well observed by the respondent.

Eventually, from the above analysis, and based on the documents submitted at the District Land and Housing Tribunal for Ilala, I am



convinced that the District Land and Housing Tribunal for Ilala was not clothed with jurisdiction to determine the case.

In sum, I have endeavored to demonstrate, I fully associate myself with the findings of the trial tribunal, and, accordingly, I find this appeal to be bereft of merits. In fine, the appeal is hereby dismissed without costs. The appellant is at liberty to institute a fresh case at the tribunal which is clothed with jurisdiction to determine the case.

Order accordingly.

Dated at Dar es Salaam this date 20<sup>th</sup> September, 2021.



  
A.Z.MGEYEKWA

**JUDGE**

20.09.2021

Judgment delivered on 20<sup>th</sup> day of September, 2021 in the presence of the appellant and the 1<sup>st</sup> and 3<sup>rd</sup> respondents.



  
A.Z.MGEYEKWA

**JUDGE**

20.09.2021

Right to Appeal explained.