

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 69 OF 2020

(arising from the judgment and decree of Land Appeal No. 201 of 2017 In the District land and Housing Tribunal for Kibaha which originated from Land application No. 32 of 2017, Tangini Ward Tribunal)

BALTHAZARY KINASHA..... APPELLANT

VERSUS

PAULA BERNAD NINDIRESPONDENT

JUDGMENT ON APPEAL.

S.M. MAGHIMBI, J:

The Respondent herein successfully sued the Appellant herein before Tangini Ward Tribunal ("the Trial Tribunal") for disturbing her tenants. Dissatisfied with the decision of the Trial Tribunal the appellant herein filled the 1st appeal at The District Land and Housing Tribunal for Kibaha at Kibaha (The appellate Tribunal) which dismissed his appeal on the ground that it lacked jurisdiction to determine the appeal because it was not a land dispute. Aggrieved by the decision, the appellant has lodged this appeal on the following grounds namely:-

1. That having regards to the totality of evidences tendered before the Ward Tribunal for Tangini, the appellate Tribunal on its first appellate jurisdiction erred in law and facts for failure to quash the whole

proceedings, decision and orders of the Tribunal for lack of jurisdiction to hear and determine a matter before it.

2. That the appellate Tribunal erred in law and in facts to quash the decision and orders of the Tribunal and direct parties to institute the matter before a competent court vested with jurisdiction to hear and determine the suit to its finality.
3. The appellate Tribunal erred in law and facts for its failure to reflect that the Tribunal for Tangini vested itself as a witness for the respondent at the same time as an adjudicator.
4. The appellate Tribunal erred in law and facts for its failure to order the respondent to pay costs of the suit, payment of general damages, exemplary damages and punitive damages for nuisances and disturbances so caused to the appellant.
5. The appellate Tribunal erred in law and facts for its failure rule that the decision and orders of the Ward were tainted with illegalities, bias and the same cannot be called a judgment in the eyes of the law as such null and void abnatio.
6. That having regards to the totality of evidences on record, the appeal Tribunal erred in law and facts for its failure to re-evaluate the evidences tendered before the Ward Tribunal as such rendered before the trial Tribunal as such rendered unfair and a wrong decision.

He therefore prayed for the following orders:

- i. The trial Tribunal's decision and orders be quashed.
- ii. The appeal be allowed,

iii. Cost to follow the event.

By an order of the court dated 25/09/2020, the appeal was disposed by way of written submissions. Before this court the appellant was unrepresented while respondent submissions were drawn and filed by Mr. Saiwello T. J Kumwenda, learned Advocate. Having gone through the submissions of the parties and the records of this appeal, I think the only thing that is for me to determine is whether the first appellate tribunal had jurisdiction to entertain the appeal.

According to the Honorable Chairman of the first appellate tribunal, he did not have appellate jurisdiction over the matter because the issue before the trial tribunal was not a land matter, rather an issue of nuisance and disturbances. He therefore dismissed the appeal on the ground of lack of jurisdiction. On the other hand, the appellant's argument is that at the time trial Tribunal reached its decision it was seated as what he called "Ward Land Tribunal" and not a normal Ward Tribunal in which the decision was given in the basis of the Land Tribunal. On his part, Mr. Kumwenda did not object the fact that when it sat to determine the matter which is now appealed against, the Ward tribunal sat under the Land Disputes Courts Act, Cap. 216 R.E 2019 ("Cap. 216"). He however argued that the dispute that was determined was not a land dispute.

For easy determination of the appeal at hand, it is important that I narrate the brief background of what has led to the appeal before hand. The parties to this appeal are neighbors in their respective landed properties. The appellant seems to be living in the land while the respondent has rented out the premises to other people. The respondent's tenants are

engaged in the business of production of metal equipment (like cooking stoves, chicken feeding equipment etc). Disturbed by the noises of that production, the appellant attempted to have the tenants evicted from the area as the noise were disturbing his health condition. Aggrieved by the move, the appellant lodged a complaint at the trial tribunal. The appellant did not deny the allegations; his only defence was that he did not complain about the respondent, rather on the noise that was produced by her tenants from the kind of business they were involved in. His complaint was connected to his health condition and the fact that the factory is being established at a residential area. The appellant also explained at the trial tribunal that the matter had been reported to the Tangini Ward Executive Officer and the Health Officer who ordered the tenants to vacate the area. Owing to that misunderstanding, the respondent herein lodged the case at the tribunal that has led to this appeal.

Having grasped the background of this application, we can go back to the main issue beforehand, the jurisdiction of both the trial and the first appellate tribunal to have entertained the matter given the nature of the complaint. According to **Halsbury's Laws of England, 4th Edition, Re issue Vol 10 para.314**, jurisdiction is defined as follows:

*"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. **The limits of this authority are imposed by the statute**, charter or commission under which is constituted, and may be extended or restricted by similar means"*

Jurisdiction is therefore a creature of statute and not discretion of the court/tribunal to confer on itself. Jurisdiction of the Ward Tribunals is provided for under the Land Disputes Courts Act, Cap. 216 R.E 2019 ("The Act"), Land Act, Cap. 113 R.E 2019 ("The Land Act") and the Ward Tribunals Act, No. 7 of 1985, Cap. 206 R.E 2019 ("The ward Tribunals Act"). It is important to explain the extent of jurisdiction of the Ward Tribunal provided for under the respective laws listed.

Section 3 of the Ward Tribunals Act established a Ward Tribunal for every ward in mainland Tanzania. The general jurisdiction of the tribunal is defined under Section 8 of the same Act, which is to secure peace and harmony in the area. Specific jurisdiction of these Tribunals is defined under Section 9 of the same Act. This jurisdiction includes enquiring and determining disputes relating to the offences and civil disputes specified in the schedule to the same Act.

On the other hand, the specific jurisdiction of the Ward Tribunal to determine land matters is conferred under Section 167 of the Land Act. It is also provided for under Section 3 of Cap 216, jurisdiction of which is defined under Section 10 of the Act. Notably, the Ward Tribunals have multiple jurisdictions on different matters. They have different jurisdiction when they are sitting under the Section 8 and 9 of the Ward Tribunals Act. Their jurisdiction is different jurisdiction when they are sitting under the Land Act and the Cap. 216.

At this point, it is important to scrutinize, while determining the dispute in the case that led to the appeal at hand, the nature of the dispute that was

referred for determination at the Ward tribunal. If it is found that the issue was concerning land, then the tribunal would have had jurisdiction under the Land Act and Cap. 216 it would mean the first appellate tribunal had jurisdiction. If the matter that was tabled before the Ward Tribunal was not pertaining and the Ward tribunal sat as a land court, it was wrong because it would have usurped jurisdiction not conferred to it by a statute.

Looking at the nature of that complain, as correctly determined by the first appellate tribunal, it was not a land but an issue of nuisance whereby the appellant herein alleged that the activities of the respondent's tenants created nuisance and was endangering health of the neighbors. This is not in any manner a dispute, action or proceeding concerning land as defined under the laws above, to have conferred jurisdiction to the Ward Tribunal to sit as land court. The nature of dispute being of civil nature in the form of nuisance, then the jurisdiction of the Ward Tribunal should have been derived under Section 8(1) & (2) and Section 9(1) of the Ward Tribunals Act and not under Section 167(1) of the Land Act or Section 3(1) and (2) (b) of Cap. 216. The mere fact that the records of the tribunal are titled as "*Baraza la usuluhishi Ardhi, Nyumba na Makazi Kata ya Tangini*" does not automatically confer jurisdiction of the Ward Tribunal in land matters because jurisdiction is a creature of statute and is not created by mere title of the tribunal.

It was therefore right for the first appellate tribunal to determine that he had no jurisdiction to determine the appeal because the claims that were tabled at the Ward Tribunal and the reliefs sought were not pertaining to land. It was an issue of nuisance relating to public disturbance and health

issue and is no way connected to land. That said, I see no reason to interfere with the findings of the first appellate tribunal on jurisdiction, the issue beforehand not being a land issue, the trial tribunal was wrong to sit as a land court which automatically made the first appellate tribunal to have no jurisdiction. I would have proceeded to dismiss the appeal, but this is not the case today because of a noted irregularity on the verdict of the first appellate tribunal as I shall elaborate.

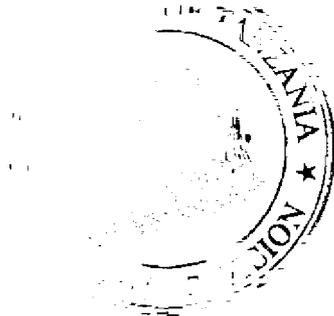
In his conclusion of the appeal before him, having found that he lacked jurisdiction to entertain the appeal because before him was not a land matter, the first appellate tribunal proceeded to bless the decision of the Ward Tribunal by holding as such:

"Since that was transpired at the Ward, I find this tribunal to lack jurisdiction in entertain this matter, there was no land dispute. If the appellant is aggrieved by the decision of the Ward Tribunal then he can challenge that to the ordinary courts which have jurisdiction with matters of nuisance"

It is obvious that although he found that the issue at trial was not land, but he proceeded to uphold the decision of the tribunal by directing an aggrieved party to take a different course by allowing the aggrieved person to challenge the impugned decision in the normal court. He even went further, on the last page of his typed judgment, to order that the file be returned to the Ward Tribunal "for further actions". With due respect to the first appellate Tribunal chairman, the position of law is clear that in case the decision is made by a court which is found to lack jurisdiction as in our case at hand, the remedy is to nullify the proceedings because a decision

made by a court/tribunal without jurisdiction is not a decision at all. Therefore if that was not a land matter, then the Ward tribunal sitting as a land court had no jurisdiction to entertain the matter. Its decision cannot therefore stand. It is for this reason that I did not dismiss the appeal before hand and instead, I invoke my revisional powers to nullify the proceedings and decision of the Ward Tribunal which sat as a land court whilst the issue for determination was not a land issue. Should any party still desire to pursue the dispute, then a fresh complaint should be instituted at a court/tribunal with competent jurisdiction to determine the claim. Given the nature of the decision I made, it is only fair that each party bear its own costs.

Dated at Dar es Salaam this 22nd day of February, 2021




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S.M MAGHIMBI
JUDGE