

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

MISC. LAND APPEAL NO. 31 OF 2017

(From the decision of the District Land and Housing Tribunal for Kinondoni in Land Appeal No. 27 of 2013, Origin Land Case No. 4 of 2013, Kijitonyama Ward Tribunal

RAMADHANI MNYONGA**1ST APPELLANT**

SAUDA HUSSEIN (suing as the administrator and administratrix respectively of the estate of the late **HAWA DARABU**)**2ND APPELLANT**

VERSUS

HUSSEIN M. MAGOTTA**RESPONDENT**

J U D G M E N T

Date of last Order: 01/04/2021

Date of Judgment: 11/06/2021

MANGO, J.

The respondent filed land case No. 4 of 2013 before Kijitonyama Ward Tribunal alleging that the Appellants trespassed into his land located at Plot 610 Block 45C Kijitonyama. The trial tribunal ruled in favour of the respondent. Dissatisfied by the decision of the trial tribunal the appellant appealed to the District Land and Housing Tribunal for Kinondoni on two grounds;

- 1. That the trial tribunal erred in law and fact in entertaining the matter without jurisdiction;**

- 2. The trial tribunal erred in law and fact in holding that one arm of the gate be removed so as to make demarcation clear without considering the length of the land.**

The District Land and Housing Tribunal dismissed the appeal with costs. The Appellants preferred the appeal at hand on the following grounds;

- 1. That the Hon. Chairperson erred in law and in fact in holding that a valuation report should base only on the alleged trespassed part and not the whole Plot 610, Block 45C;**
- 2. That the Hon. Chairperson erred in law and in fact in upholding the order for demolition of the alleged trespassed wall based on the findings of the trial tribunal that the appellant was ordered by surveyors to demolish.**

During hearing the Appellants were represented by Mr. Julius Msengezi, learned advocate while the respondent prosecuted the appeal in person. Submitting in support of the appeal, Mr. Msengezi argued that the trial tribunal had no pecuniary jurisdiction to entertain the dispute at hand as its value is more than 3 Million Shillings. He cited section 15 of the Land Disputes Courts Act, [Cap. 216 R. E. 2019] which provides for pecuniary jurisdiction of the ward tribunal to be 3 million shillings. He argued that the issue of jurisdiction of the trial tribunal was raised before the District Land and Housing Tribunal for Kinondoni where the Appellants produced valuation report prepared by Valuation Unit Ministry for Lands. According to the valuation report, the value of the suit land is Tanzanian Shillings One Hundred and Five Millions Five Hundred and Five Hundred Thousand (Ths. 105,500,000/). According to him, the trial tribunal disregarded the valuation report because it was made in respect of the entire Plot instead of the disputed part of the plot only which was merely 1.5feets. He

argued further that, a decision made by a court or tribunal without jurisdiction is nullity. He cited the decision of this court, Hon. Ngwala, J. in the case of **Rehema Hamisi and 4 others versus Fauzia Hussein Awadh**, Misc. Land Appeal No. 120 of 2009 and the case of **Zanzibar Insurance Corporation Limited Versus Rudolf Temba** Commercial Appeal No. 1 of 2006, High Court of Tanzania, Commercial Division, at Dar es Salaam.

On the second ground of appeal, he argued that, the trial tribunal based its decision on the findings of the surveyors, citing section 167 (1) a-e of the Land Act, [Cap 113 R.E. 2019] and section 3(2) a-e of the Land Disputes Courts Act, [Cap. 216 R. E. 2019] he argued that, surveyors are not among organs which are vested with powers to adjudicate land disputes. Thus, it was wrong for the Trial tribunal to base its decision on the findings of the surveyors.

In his reply submission the respondent argued that, the trial tribunal had jurisdiction to determine the dispute as it involves part of the suit land of which its value does not exceed Tanzanian Shillings 3 million. On whether the trial tribunal based its decision on its own findings or that of the surveyors, he submitted that the trial tribunal based its decision on its own findings after considering the findings of the surveyors.

In his rejoinder the Appellants counsel reiterated his submission in chief.

I have considered submissions by both parties and court record. According to court record, it is not disputed that the respondent is the lawful owner of Plot Plot 610 Block 45C Kijitonyama comprised under Certificate of title No. 50120. The only dispute between the appellant and the respondent is the alleged trespass by the appellant into the respondent's land. While the respondent alleged that the Appellants trespassed into his land the first appellant testified that the issue of trespass was resolved way back in 2013.

The main issue before me is whether the Ward Tribunal had jurisdiction to determine the dispute in this case. The law which was applicable at the time of instituting Land Case No. 4 of 2013 before the ward tribunal, section 15 of the Land Disputes Courts Act, [Cap 216 R.E 2002] limits pecuniary jurisdiction of the Ward Tribunal to 3 Millions Tanzanian Shillings. The relevant section reads;

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

I agree with the counsel for the respondent that the decision made by the court or tribunal without jurisdiction is nullity ab initio.

The issue of jurisdiction of the trial tribunal was raised by the appellant in their appeal before the District Land and Housing Tribunal for Kinondoni in Land Appeal No. 27 of 2013. In proving the value of the suit land, the Appellants produced a valuation report which indicates that the value of the suit land is Tanzanian Shillings 105,000,000/-. In considering the value of the suit land, especially where the land is surveyed the value of the entire plot is considered because one cannot separate part of a surveyed land and consider the same to be capable of existing independently from the main title without disturbing the description of the surveyed plot in terms of its size. In such circumstances, it was not correct to hold that the value of the suit land in this appeal is below 3 Million Shillings while there is a valuation report in respect of the suit land which indicates expressly that the value of the suit land is more than three Millions Shillings. As it is clearly provided that the pecuniary jurisdiction of the Ward

Tribunal is 3 Millions Shillings, I find Kijitinyama ward tribunal to have determined the dispute at hand without jurisdiction.

For that reason, I hereby nullify the proceedings and decision of the District Land and Housing Tribunal as it entertained on merits an appeal from the decision made without jurisdiction. I also employ revisionary powers of this court to nullify the proceedings and decision of the Ward Tribunal for want of jurisdiction. Parties are at liberty to institute fresh proceedings in respect of this dispute before a Tribunal with competent jurisdiction. Given the circumstances of this appeal I award no costs.




Z. D. MANGO

JUDGE

11/06/2021