

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

AT DAR ES SALAAM

LAND APPEAL NO. 229 OF 2021

*(Arising from the District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Land Application No.142 of 2021)*

DHAHARAN RAJABU KYAZE APPELLANT

VERSUS

MKOMBOZI COMMERCIAL BANK PLC 1ST RESPONDENT

GIBORE GWESO MAGESSA 2ND RESPONDENT

KISAONI GENERAL AUCTION TANZANIA LTD 3RD RESPONDENT

ZIHIJA SELEMANI MUHEMA 4TH RESPONDENT

JUDGMENT

Date of last Order: 05.09.2022

Date of Judgment: 14.09.2022

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni in Land Application No.142 of 2021. The material background facts to the dispute are; that the appellant lodges a

case against the respondents at the District Land and Housing Tribunal and before hearing the case on merit, the 1st respondent raised an objection that the District Land and Housing had no pecuniary jurisdiction to determine the matter. The Tribunal upheld the preliminary objection and struck out the application with costs.

Aggrieved, the appellant appealed before this court against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala and raised two grounds of grievance, namely:-

- 1. That the Hon. Chairperson erred in law and fact in holding that the tribunal has no pecuniary jurisdiction to adjudicate the application.*
- 2. That the Hon. Tribunal erred in law and fact in basing its decision on the amount of the loan secured instead of the value of the appellant's house which is the subject matter of the application.*

When the matter was called for hearing the learned counsels for both parties were present. The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly conformed to the 2nd respondent was aware about the hearing; however, he did comply with the Court order. Therefore, I proceed to compose the Judgment based on

the written submissions made by the appellant's counsel, reply made by the 1st respondent and the 4th respondent counsels.

In his written submission, the appellant narrated the genesis of the matter which I am not going to reproduce in this appeal. The learned counsel for the appellant opted to combine the two grounds to combine and argued them together.

Submitting on the said two grounds, Mr. Hamisi contended that the District Land and Housing Tribunal's jurisdiction is derived from section 22 (1) of the Land Disputes Courts Act, Cap. 216. He added that the pecuniary jurisdiction of the tribunal is stated under section 33 (2) (a) and (b) of Cap. 216 dictates that in other proceedings than those for recovery of possession of the immovable property the value of the subject matter does not exceed Tshs. 200,000,000/=. He added that the appellant in Land Application No. 142 of 2021 in paragraph 4 stated that the estimated value of the suit property is Tshs. 134,000,000/= because there is no current valuation report establishing the value of the land.

Mr. Hamisi went on to submit that surprisingly, the tribunal stated that the value of the land property is Tshs. 650,000,000/=. In his view the invention of the tribunal is unfounded and the tribunal erroneously considered the

value of the land suit Tshs. 650,000,000/=. He added that the suit premises was just part of securities in the said loan of Tshs. 650,000,000/=, it was not the only security. Supporting his submission, Mr. Hamisi cited the case of **Shana General Store Ltd & Another v the NMB PLC**, Civil Appeal No. 1 of 2019 HC (unreported).

The learned counsel for the appellant continued to argue that the appellant's complaint is over the landed property comprising CT No. 186282/82 on Plot No. 746, Block D Sinza Area in Kinondoni within Dar es Salaam Region. The same was sold at the public auction by the 3rd respondent. Mr. Hamisi urged this court to determine the matter and find that the subject matter in Land Application No. 142 of 2021 is a landed property comprising CT No. 186282/82 on Plot No. 746, Block D Sinza Area in Kinondoni at Dar es Salaam.

On the strength of the above submission, the learned counsel for the appellant beckoned upon this court to allow the appeal with costs.

The 4th respondent's counsel did not oppose the appeal. In his submission, he started to narrate the background of the matter which I am not going to reproduce in this appeal. Mr. Fabian opted to combine and argue the 1st and second grounds of appeal together. He submitted that

the suit property on Plot No. 505 Block 47 Kijitonyama at Kinondoni with DSM valued Tshs. 500,000,000/= a house on Plot No. 448/1 Block 6 Keko Mwanga at Temeke within DSM valued Tshs. 125,000,000/= and Plot No. 746 Block D Sinza, Kinondoni in DSM valued Tshs. 134,000,000. He contended that it is not conceivable for the trial tribunal to refrain from hearing the matter basing on the total value of the mortgaged amount instead of the value of landed property in dispute.

Mr. Fabian continued to submit that the objection must be on pure point of law, he stated that the tribunal based on factual material to rule out that it has the jurisdiction to entertain the matter. He added that the expression preliminary objection is used to refer to objection to the jurisdiction of the Court, a plea of limitation and the like; it contains a point of law which disposed of the suit. To support their submission they cited the cases of **Musanga Ng'andwa v Chief Japhaet Wanzagi & 8 Others** [2006] TLR and **Mukisa Biscuits Manufacturing Company Ltd v West End Distributor Ltd** [1969] EA 69. It was the 4th respondent's view that, the said objection was supposed to be argued without looking at the evidence on record. The learned counsel for the 4th respondent claimed that the tribunal was right to determine the objection and the same meet the tests enunciated in the cited cases.

On the strength of the above submission, the 4th respondent's counsel urged this Court to allow the appeal.

The 1st respondent in his submission had nothing to submit in relation to the instant appeal. He simply stated that the 1st respondent is party to this appeal because the 2nd respondent at the District Land and Housing Tribunal raised a preliminary objection but the 1st respondent did not raise the said objection. It was Mr. Kambo submission that in case this court will decide in favour of the appellant then the 1st respondent should not be condemned to pay costs.

I have revisited the records and submissions of both sides now, I am in a position to determine the appeal. I will consolidate both grounds of appeal. Because they are intertwined.

The appellant complained that the Chairman was not right in upholding that the District Land and Housing Tribunal had no pecuniary jurisdiction to determine the matter. I have scrutinized the appellant's application and noted that in paragraph 4, he has stated that the estimated value of the suit property is Tshs. 134,000,000/=. The 2nd raised the preliminary objection respondent at the tribunal raised an objection that the tribunal

had no pecuniary jurisdiction to determine the matter based on the value of the mortgaged property.

The District Land and Housing Tribunal upheld the objection. However, as rightly pointed out by Mr. Hamisi, the subject matter of the suit landed property is well stated under paragraph 4 of the appellant's Application, he stated that the estimates value of the suit land is Tshs. 134,000,000/=. Again, in paragraph 6 (a) (ii) of the Application, the appellant clearly stated that the suit premises was just part of securities in the said loan of Tshs. 650,000,000/= that means it was not the total value of the suit properties. For ease of reference. I reproduce part of Paragraph 6 (a) (ii) here under:-

*“ ...the mortgaged over his landed property in favour of the 1st respondent securing Tshs. 100,000,000/= only **out of** Tshs. 650,000,000/=. ”*

Applying the above excerpt, it is clear that the value of suit land was part of the securities of the loan which was Tshs. 650,000,000/=.

For the aforesaid findings, I hold that the raised objection is not a pure point of law and it does not fit the threshold in the case of **Mukisa Biscuits Manufacturing Company** (supra). In the first place, the Chairman was not required to determine the preliminary objection because it is not a pure

point of law. Therefore, the tribunal's findings and decision in regard to the said objection is disregarded.

Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceeds to revise the proceedings of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No.142 of 2021 and remit the file to the District Land and Housing Tribunal for Kinondoni at Mwananyamala to continue with the hearing of the application on merit.

The appeal is allowed and the 2nd respondent will bear the costs of this appeal.

Dated at Dar es Salaam this date 14th September, 2022.




A.Z.MGEYEKWA

JUDGE

14.09.2022

Judgment delivered on 14th September, 2022 in the presence Mr. Masalu, learned counsel for the respondent.




A.Z.MGEYEKWA

JUDGE

14.09.2022

Right to appeal fully explained.