

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

LAND APPEAL NO. 77 OF 2021

(Arising from Ilala District Land and Housing Tribunal in Land Appeal No.60 of 2020;
Originating from Gongolamboto Ward Tribunal in Application No. 79 of 2019)

ASHURA MWINYIMVUA.....1ST APPELLANT
HAMZA A. MSHINDO.....2ND APPELLANT
RAMADHARI MSHINDO AMBARI.....3RD APPELLANT
ASIA ABDALLAH AMBARI.....4TH APPELLANT
TWAHA ABDALLAH MSINDO.....5TH APPELLANT
ZAINA MSHINDO ABDALLAH.....6TH APPELLANT

VERSUS

YAHAYA SAID HINCHA.....RESPONDENT

Date of Last Order: 02.09.2022
Date of Judgement: 17.10.2022

JUDGMENT

V.L. MAKANI, J

The respondent herein successfully sued the appellants herein at Gongolamboto Ward Tribunal (the **Ward Tribunal**) for the plot described as a piece of land situated at Gongolamboto (**the suit land**). The appellants herein appealed and lost at Ilala District Land and Housing Tribunal (the **District Tribunal**) in Land Appeal No.60 of 2020 (A.R. Kirumbi, Chairman).

Dissatisfied with the decision of the District Tribunal, the appellants have preferred this appeal with the the three grounds of appeal hereunder reproduced:

- 1. That the tribunal erred in law in upholding the Ward Tribunal's decision regardless of the fact that the Ward Tribunal entertained the matter with no jurisdiction.*
- 2. That the tribunal erred in law and fact in determining the matter basing on the respondents' evidence which is covered with discrepancies.*
- 3. That the Tribunal erred in law and fact in not considering the credibility of evidence of the appellants.*

The appellants prayed for the appeal to be allowed and the decision of the District Tribunal be set aside.

With leave of the court the matter proceeded by way of written submissions. Mr. Michael Mantawellah Lucas, Advocate drew and filed submissions on behalf of the appellants, while Mr. Onesmo Stambuli filed submissions in reply on behalf of respondent.

On the first ground, Mr. Lucas said that the question of jurisdiction of a court is so fundamental and that it can be raised at any time. He said that the parties did not exchange any pleadings at the Ward Tribunal which is the practise. That all the facts and issues in this trial

were based on the claimants' oral statement of the claim and respondent's oral reply as recorded by the Ward Tribunal. He said the appellants were not obliged to follow any rules of evidence or procedure. That, the appellants being poor laymen were responding to the questions put to them and had no idea that there was need to address the issue of pecuniary jurisdiction. He said the Tribunal erred in punishing the appellants for not bringing up the question of jurisdiction. He said this did not require that the appellants should have brought evidence on the value of the property in the form of valuation report. He said there was no evidence that was required to be produced in the Ward Tribunal as the question of jurisdiction forms part of the pleadings. The issue that the respondent bought the suit land at TZS 550,000/= is still disputed by the appellants who never sold it to the respondent. He relied on the case of **Ms. Tanzania China Friendship Textile Co. Ltd vs Our Lady of Usambara Sisters (2006) TLR 70**, section 13 (1) of the Land Disputes Courts Act, CAP 216 RE 2019 and section 15 (1) of the Ward Tribunal Act CAP 206 RE 2002.

Mr. Lucas argued the second and third grounds of appeal together. He said that the whole of the respondent's evidence was covered with

discrepancies. That the evidence was overlooked and not considered at all. That appellants' testified that they never sold the disputed piece of land to the respondent but their testimonies were neither considered by the Ward Tribunal nor the appellate Tribunal. He prayed for the appeal to be allowed with costs.

In reply, Mr. Stambuli gave a brief history of the matter. On the first ground regarding jurisdiction, he that the appellants' failed to prove it earlier. He said the respondent bought the suit land from one Mshindo Abdallah Rashid (deceased) for a consideration of TZS 550,000/= . That the appellants did not show any evidence that the suit land is beyond that value. That according to section 15 of the Land Disputes Courts Act, the jurisdiction of the Ward Tribunal is TZS 3 Million Shillings and the suit land was bought at TZS 550,000/= therefore it was within jurisdiction of the Ward Tribunal. He cited the case of **Maigu E.M Magenda vs Arbogast Maugo Magenda, Civil Appeal No.218 of 2017 (CAT)** and insisted that appellants did not submit any valuation report.

On the second ground of appeal, Mr. Stambuli submitted that the respondent's evidence had no discrepancies. He said the respondent

bought the suit land from the deceased one Mshindo Abdallah Rashid who was the 1st appellant's husband and father to the rest of the appellants. He said all the appellants did not dispute that the sale between the respondent and the late Mshindo Abdallah Rashid and all evidence was tendered before the Ward Tribunal and there were no discrepancies which occurred in the respondent's evidence. He said that the court does not deal with assumed story but facts and law only. That the Sale Agreement between the respondent and Mshindo Abdallah Rashid was witnessed by the appellants themselves. He insisted that all the evidence tendered in the Ward Tribunals was considered meritorious.

On the third ground of appeal, Mr. Stambuli said that every witness was given opportunity to testify, and the Ward Tribunal considered evidence provided by the witnesses. He said that the allegation that the Ward Tribunal did not consider the evidence of the witnesses is not true. He said the Sale Agreement between the respondent and Mshindo Abdallah Rashid was witnessed by a Ten Cell leader which was the 1st respondent's son called Zuberi Mshindo whose area of administration was Gongolamboto and not Msimbazi as testified by the appellants. He prayed for this appeal to be dismissed.

The appellants did not file submissions in rejoinder.

I have gone through the submissions by Counsel for the parties, the main issue for consideration is whether this appeal has merit.

Mr. Lucas for the appellants is contesting the jurisdiction of the Ward Tribunal. That the value of the suit land was beyond the Tribunal's pecuniary jurisdiction. He said that the issue of jurisdiction is fundamental one which can be raised at any stage of the case. On the other hand, Mr. Stambuli alleged that at the Ward Tribunal the suit land was acquired by way of purchasing from one Mshindo Abdallah who was husband of the 1st appellant and, father to the rest of the appellants at the price of TZS 550,000/=.

In my view, it was the appellants' who raised the issue of jurisdiction, so they were the ones who were supposed to prove the same. They had a duty of justifying the same by bringing valuation assessment. The fact that they were laymen as suggested by Mr. Lucas cannot be accorded any weight as it entails ignorance which in law has no excuse. In absence of valuation assessment, the purchase price which

is alleged to be TZS 550,000/= remains the consideration for assessment of the pecuniary jurisdiction. Under the Law of Contract Act consideration does not need to be adequate but only sufficient, meaning that the amount was sufficient to the seller. In the absence of valuation assessment, the allegations that the suit land is beyond the jurisdiction of the Ward Tribunal cannot stand. This ground therefore has no merit.

The 2nd and 3rd grounds are based on the weight of evidence and shall be argued together. The allegations by the appellants were that the respondent's evidence had discrepancies and that the evidence was not considered by the Ward Tribunal. I have given a detailed look at the submissions, and I have noted that Mr. Lucas for the appellant has failed to state which evidence was not considered at all. It was not disputed by both parties that the respondent bought the suit land from the late Mshindo Abdallah Rashid who was the husband to the 1st appellant and father to the rest of the appellants. The only dispute by appellants herein was that the alleged land bought was not the same to the suit land. However, the Chairman of the Ward Tribunal expressly stated that the issue was resolved by the ten-cell leader one Zacharia Abdallah who witnessed the sale. In other words, the

evidence in support of the respondent herein outweighed that of the appellants as was said in the case of **Hemed Said vs. Mohamed Mbilu [1984] TLR 133** that:

"...parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

In that regard, the 2nd and 3rd grounds of appeal have no merit and they are dismissed.

In view of the above, I find no fault in the decision of the District Tribunal. Subsequently the appeal is hereby dismissed with costs for lack of merit.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
17/10/2022