

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

MISC. LAND APPEAL NO. 50 OF 2022
*(From Appeal Judgment of District Land and Housing
Tribunal for Kisarawe, in Land Case Appeal No.108 of 2021, originating from
the Ward Tribunal of Kiluvya Ward, in Application No.7 of 2021)*

WILLIUM LEVISON.....APPELLANT

VERSUS

SIMON H MAMUYA.....RESPONDENT

JUDGMENT

Date of Last Order: 10.11.2022

Date of Ruling: 24.11.2022

T. N. MWENEGOHA J.

This appeal was filed based on the following grounds; -

- 1. That, the Hon. Chairman erred in law and in holding that, the appellant has no sufficient reasons to prove the pecuniary jurisdiction without taking note that the Ward Tribunal of Kisarawe conducted on site visit of the land in dispute;**
- 2. That, the Hon. Chairman erred in law and in holding that the prayer to join necessary party can only be prayed at early stage;**
- 3. That, the Hon. Chairman erred in law and in holding that the appellant failed to exercise buyer be aware without considering true ownership of the land in dispute.**

4. The Hon. Chairman erred in law and in fact by failing to evaluate the evidences tendered at the Ward Tribunal.

The appeal was heard by way of written submissions. The appellant was represented by Advocate Elipidius Philemon, while the respondent enjoyed the legal services of Advocate Daniel A. Makalo.

Submitting on the 1st ground, Mr. Philemon was of the view that, the land in dispute was purchased by the appellant at a price of 2 million. The appellant thereafter developed the land by building a house. The sale agreement was tendered before the Tribunal. That, by common sense, the value of the subject matter based on the value of the land and the developments is above 3 million. Therefore, by virtue of section 15 of the Land Disputes Courts Act, Cap 216, R. E. 2019, the trial tribunal had no jurisdiction over the matter.

He went on to argue on the 2nd ground that, the case lacks a necessary party, the seller, one Nalongwa Zacharia Shila. Therefore, his absence affected the case and it was not supposed to proceed to the end as stated in the case of **Constantine B. Asenga versus Elizabeth Peter and 4 Others, Civil Appeal No. 70 of 2019**, quoting the case of **Farida Mbaraka & Farid Ahmed Mbaraka versus Domina Kagaruki, Civil Appeal No. 136 of 2006**.

The 3rd and 4th grounds were argued together that, the Chairman of Kisarawe District land and Housing Tribunal failed to evaluate the evidence of parties properly. That, he failed to involve the village counsel who were involved in the transaction.

In reply, Mr. Makao was of the view on the 1st ground that, the appellant did not raise any objection with regard to the jurisdiction of the Ward Tribunal, hence he cannot raise the same at this point as stated in **Sospeter Kahindi versus Mbeshi Mashini, Civil Appeal No 56 of 2017, Court of Appeal of Tanzania at Mwanza(unreported)**. On the 2nd ground, it was argued that, the person who is claimed to be a necessary party was called as a witness at the Ward Tribunal. He testified for the appellant. That being the case, the said person has already been afforded the right to be heard. On the 3rd and 4th ground it was argued that the appellant failed to prove that the land belonged to him. The evidence was well evaluated and the case was decided accordingly.

Having gone through the submissions of parties as presented by their respective counsels, the issue for determination is whether the appeal has merits or not.

On the 1st ground, the appellant faulted the 1st appellate tribunal for ignoring the fact that, the trial tribunal entertained a matter that was beyond its pecuniary jurisdiction. The contention of the appellant was that, he has developed the land in dispute, therefore it is above the pecuniary jurisdiction of the Ward Tribunal. However, he did not provide any evidence to support his arguments. Apart from that, he did not raise this issue at the trial tribunal. This court would have considered his arguments if at least a valuation report could have been tendered to prove that the value of the land in dispute is above 3 million as claimed. Now, what I can say, the failure of the appellant to raise this as an objection at the earliest stage of the trial leaves this Court with no option other than rejecting his claim, see **Sospeter Kahindi versus Mbeshi Mashini,**

Civil Appeal No. 56 of 2016, Court of Appeal of Tanzania (unreported). The 1st ground is devoid of merits.

The 2nd ground was the non-joinder of a necessary party, Nalongwa Zacharia Shila. That, being a seller, he was supposed to be joined at the trial tribunal. Failure to join him makes the whole proceedings null and void. However, the records show that, the said person appeared and gave his testimony in favour of the appellant. His participation in the case as a witness is sufficient to show that he was fully heard and the Decree can be passed and executed against him. Therefore, the 2nd ground also is rejected for lack of merits.

Lastly, on the 3rd and 4th grounds which were argued together, both were on evaluation of evidence. That, the appellant faulted the 1st appellate tribunal for failure to evaluate the evidence of parties properly. I went through the records of both tribunals. The evidence was well analysed and evaluated. Both tribunals gave the respondent the right of ownership over the disputed land based on the evidence presented by him before the trial tribunal. In that case, I find no reason to interfere with their findings, rather to be in line with them. The 3rd and 4th grounds too are rejected based on what I have said herein earlier.

In the end, the appeal is dismissed with costs.

It is so ordered.




T. N. MWENEGOHA

JUDGE

24/11/2022