

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

**LAND APPEAL NO. 91 OF 2021**

**(An Appeal from the decision of the District Land and Housing Tribunal for  
Kinondoni District at Mwananyamala in Land Application No. 726 of 2020  
dated 25<sup>th</sup> June 2020)**

**PETER JOSEPH KWAI ..... APPELLANT**

**VERSUS**

**EMMANUEL MZEE CHUWA ..... RESPONDENT**

**JUDGMENT**

*28/4/2022 & 17/5/2022*

**A. MSAFIRI, J**

The origin of this appeal is a Land Dispute No. 81 of 2019 which was filed before Manzese Ward Tribunal by the appellant Peter Joseph Kwai. The nature of the dispute is that Emmanuel Chuwa (now respondent) was a tenant of the father of the appellant where he has leased a business frame (a shop). At the Ward Tribunal, Peter Joseph Kwai claimed for vacant possession of the said shop on the allegations that Emmanuel Chuwa has failed to pay rent for about five months. That, the tenancy period has ended since 22/06/2019 and that the tenant has closed the shop and his whereabouts is unknown.

The Ward Tribunal decided in favour of the appellant and ordered that the respondent should vacate the suit premises without any conditions. The decision of the Ward Tribunal was ex-parte against the respondent

*Adle.*

as it was claimed that the respondent was summoned to appear before the Ward Tribunal and failed to enter appearance nor file his defence for the reasons known to himself.

The respondent, dissatisfied by the decision of the Ward Tribunal, instituted an application for Revision, Application No. 726 of 2020 in the District Land and Housing Tribunal for Kinondoni at Mwananyamala (the District Tribunal).

In the application for Revision, the applicant (now respondent) raised major grounds among others for revision as follows;

- i). That, the Ward Tribunal violated natural rule of justice as the applicant was neither summoned during the hearing of the dispute nor was he notified on the date of the delivery of the decision of the Ward Tribunal.
- ii). That, the respondent had no locus standi to prosecute the matter at the Ward Tribunal since he was not the owner of the suit property and did not acquire the power of attorney from the owner.
- iii). That, the Ward Tribunal had no jurisdiction to entertain the matter as the value of the suit property was over and above the pecuniary jurisdiction of the Ward Tribunal.

The application was opposed by the then respondent who filed the counter affidavit.

After revising the proceedings and decision of the Ward Tribunal, the District Tribunal delivered Ruling in favour of the applicant. The District Tribunal agreed with the grounds for revision raised by the applicant except for the ground on the pecuniary jurisdiction. *Aelle*

The Hon. Chairperson ruled that the amount claimed for rent was below TZS three million (3,000,000/-) therefore the Ward Tribunal had pecuniary jurisdiction to hear and determine the matter. The Hon. Chairperson granted the application, quashed and set aside the proceedings and judgment of the Ward Tribunal.

The appellant was dissatisfied hence this appeal. The appeal is based on the eight grounds of appeal which I need not recite herein as they are part of Court records.

The appeal was argued by way of written submissions whereby the appellant was represented by CW&IJ Attorneys while the respondent was represented by Mlyambelele A. L. Ng'weli, Advocate.

Having gone through the submissions by both parties in support and contest of appeal, the pertinent issue here is whether the appeal at hand has merit. I should first point that, I have considered the powerful submissions from the counsels of both parties along with the cited authorities which have been of much assistance to the Court.

Going through the grounds of appeal, I believe that the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grounds of appeal contains same issue. On those grounds of appeal, the appellant is claiming that, the District Tribunal erred in law and facts whereby it failed to address the issue of unpaid rent which was due to the appellant's father. That the District Tribunal never addressed the issue of ownership and the reinstatement of rented shop to the appellant. The appellant has averred further in the said grounds of appeal, that the District Tribunal failed to invoke the provisions of Section 35(1) (a, b, &

*Alls*

d) of the Land Disputes Court Act, Cap 216 by which the Tribunal could have addressed the issue of outstanding rent and ownership of the appellant's rented shop which have remained unresolved. He maintained that the District Tribunal erred for its failure to apprehend facts and evidence tendered before the Ward Tribunal and wrongly reached to the misconceived decision.

Arguing on those grounds of appeal, the counsel for the appellant seems to have mixed up facts and hence lost the focus of the appeal. With due respect, the submission by the counsel for the appellant had no coordination of facts and it confused the Court on what the appellant through his counsel intended to achieve.

Arguing on the 1<sup>st</sup> ground of appeal, the counsel submitted that the District Tribunal erred when it looked down at the right to live and protection of life, and that the issue of the unpaid rent was important for the sake of the appellant's father to meet his monthly dialysis (liver treatment), and heart treatment. That the appellant wanted a shop to be returned to him so that he can rent it to another person. That according to Article 24(1) of the Constitution of the United Republic of Tanzania, the appellant has a right to protection of his property.

Before the District Tribunal, there was an application for revision of the decision of the Ward Tribunal. The issues raised by the applicant before the District Tribunal seeking for the same to exercise its revisional jurisdiction as already pointed herein above was the issue of Ward Tribunal proceeding with the hearing of dispute and enter judgment ex-parte without proper notification to the other party; the issue of locus

*Allo.*

stand; the issue of jurisdiction of the trial Tribunal; and other issues as contained in the chamber summons filed by the applicant.

The issue of unpaid rent and ownership of the shop in dispute (business frame) was never raised by any party during the revision proceedings.

The appellant is arguing that the District Tribunal would have invoked the provisions of Section 35 (1) of the Land Disputes Act and address the issue of outstanding rent and ownership of the appellant's shop.

It is my view that, the District Tribunal did not error on facts or law. This is because it nullified the entire proceedings and judgment of the Ward Tribunal. After that the appellant was at liberty to institute a fresh suit claiming for repossession of the claimed shop and the rental proceeds.

The provisions of Section 35 (1) of the cited Act set the powers of the District Tribunal when hearing an appeal. It is Section 36 which provides for the Revision, and also it provide that the District Tribunal in the exercise of revisional powers, it shall also have all the powers conferred upon it in the exercise of its appellate powers.

In the matter at hand, the District Tribunal having found that there was irregularity in the proceedings and judgment of the Ward Tribunal, it invoked the provisions of Section 35(1) of the Land Disputes Act that is why it quashed and set aside the proceedings of the Ward Tribunal.

As already observed the appellant was as liberty to institute a fresh suit before the competent Tribunal according to the law and regulations and claimed for payment of rent and repossession of his shop. *Adls*

For the above reason, I find that the appellant's claims on grounds No. 1,2,5 and 6 of appeal are misconceived and have no basis and I hereby dismiss them.

On ground of appeal No. 3, it is stated that the District Tribunal erred by quashing the proceedings of Manzese Ward Tribunal basing on the fact that the appellant possessed unregistered Power of Attorney and that the respondent was not served with summons to appear.

In the written submission, Counsel for the appellant stated that, the District Tribunal's statement that the Counsel for appellant didn't know that the Power of Attorney ought to be registered was unfair. **That, the District Tribunal missed the point that the appellant had volunteer to register the power of Attorney and forgot to do so.** The counsel for the appellant maintained that, the omission was not fatal but curable. He said that, the power has already been vested into the appellant by his ailing father who is old with poor health.

Counsel for the respondent arguing on the ground of appeal no. 3, he maintained that the appellant instituted the claims at the Ward Tribunal without being accorded any power of attorney by one Joseph Kwai who is the owner of the shop in dispute.

The issue of Power of Attorney and the absence of it was raised and determined during the hearing of the revision at the District Tribunal. During the hearing, the appellant (now respondent) through his advocates submitted that the appellant had no locus standi to institute a claim at the Ward Tribunal. This is for the reason that the father of appellant who is the owner of the property in dispute did not issue and register the power

*Atte.*

of attorney to the appellant to institute and prosecute the claim on behalf of his father.

Responding, the respondent (now appellant) through his advocate, submitted that, the Power of Attorney was prepared but it was not registered. He actually prayed before the District Tribunal to give him leave to go and register the Power of Attorney.

The counsel being a learned advocate and an officer of the Court ought to know that, the register of the Power of Attorney at a revisional Tribunal could not justify the fact that the appellant had no locus standi to institute the matter at the Ward Tribunal because at that time, his purported ill father had not issued him a power of attorney to institute and conduct/prosecute the matter on his behalf. The counsel ought to know that the forgetfulness of doing an act, is not an excuse in law hence the claim that the appellant "forgot" to register the power of attorney cannot stand.

It is surprising that the counsel for the appellant is claiming that the finding of the District Tribunal to quash the proceedings of the Ward Tribunal was unfair. The counsel knows that it is a Rule of law that a person who wants to institute or has instituted a matter against another person, has to have interest in that particular matter. It is the procedure that a person who is unable to sue in his own capacity for some reasons such as illness and wants another person to sue on his behalf, then that person has to give power of attorney to that other person to sue on his behalf. *Adls.*



This was not done in the matter before the trial Tribunal. I am of the view that this was a serious irregularity and was fatal. Therefore, I agree with the findings and the decision of the District Tribunal that the Power of Attorney was supposed to be registered and issued to the appellant before the institution of the dispute at the Ward Tribunal.

On the issue of summons, I also agree with the District Tribunal that there is no proof from the Ward Tribunal proceedings that the respondent was served with the summons to appear or he was notified about the ex-parte decision of the Ward Tribunal.

Basing on all these apparent irregularities on face of record, the District Tribunal was right to revise and invoke the powers given under the provision of Section 35 and 36 of the Land Dispute Act. I also find this ground of appeal to have no merit and I dismiss it.

On the ground of appeal No. 4, the appellant again, through his advocate, confuses the court by his failure to focus on a particular pertinent issue. In this ground of appeal, the appellant address the issue of jurisdiction of Ward Tribunal to entertain the dispute at hand. The appellant agrees with the decision of the District Tribunal, however he argues that the said Tribunal failed to give an order or way forward on how to resolve the long overdue dispute between the land lord and the tenant. I have already addressed this issue that after the decision of the District Tribunal, the appellant was at liberty to pursue his claims by instituting a fresh suit before the competent Tribunal. Since the appellant agrees with the decision of the District Tribunal that the Ward Tribunal had jurisdiction to

*Adls.*



entertain the matter, then I need not ponder much on this ground of appeal. I also dismiss it.

I have noticed that in the written submission, the counsel for the appellant is raising some new issues which was not raised before the District Tribunal. Those new issues are such as the fact that the respondent filed his documents at the District Tribunal out of time, and the issues raised in grounds of appeal No. 7 and 8, that advocate Kelvin Chuwa who was the advocate of the respondent is a relative of the respondent, so this was infringement of appellant's basic rights. Because they are new issues which have been raised at this appellate stage, I will not determine them and I disregard them.

The Court of Appeal refused to deal with issues raised belatedly in the case of **Farida and Another vs. Domina Kagaruki**, Civil Appeal No. 136 of 2006, DSM Registry, (unreported), where it was held that:

*"It is the general principle that the appellate court cannot consider or deal with issues that were not canvassed, pleaded and or raised at the lower court. For that reason, they are dismissed".*

Basing on the above principle, the grounds of appeal No. 7 and 8 are dismissed.

From the hereinabove analysis, I find no any reason to differ with the findings, and judgment of the District Tribunal in Application No. 726 of 2020. I dismiss the appeal in its entirety with costs. *Alle*.

It is so ordered. Right of Appeal explained.

Dated at Dar es Salaam this 17<sup>th</sup> day of May, 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI.**

**JUDGE**