

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

**MISCELLANEOUS LAND CASE APPEAL NO. 58 OF 2021**

*(Arising from Misc. Application No. 45 of 2019 of the District Land and Housing Tribunal for Temeke at Temeke and Originating from Land Dispute No. 381/10/2018 of Twangoma Ward Tribunal)*

**GOLDENRULE COMPANY LIMITED ..... APPELLANT**

**VERSUS**

**FRANK URASSA ..... RESPONDENT**

*Date of last Hearing: 30/03/2022*

*Date of Ex parte Judgment: 31/05/2022*

**EX PARTE JUDGMENT.**

**I. ARUFANI, J**

The appellant, Goldenrule Company Limited, filed in this court the instant appeal to challenge the decision of the District Land and Housing Tribunal for Temeke at Temeke (hereinafter referred as the District Tribunal) delivered in Miscellaneous Application No. 45 of 2019 dated 18<sup>th</sup> March, 2021. After the respondent, Frank Urassa being duly served through publication and failed to appear before this court, the court allowed the appellant to proceed to argue the appeal ex parte.

The brief background of the matter is to the effect that, one Zefania Amosi acting on behalf of Nganga Maduhu Nkonya filed Land Dispute No. 381/10/2018 at Toangoma Ward Tribunal (hereinafter referred as the

Ward Tribunal) against the respondent. The mentioned claimant alleged the respondent had trespassed into their land and prayed for an order of restoration of their original boundary. After the matter being heard by the Ward Tribunal it was decided the respondent's boundary with the complainant should be the shrub fence which was demarcating the land in dispute.

The appellant was dissatisfied by the decision of the Ward Tribunal and filed Miscellaneous Application No. 45 of 2019 before the District Tribunal. He urged the District Tribunal to call for the record of the Ward Tribunal and revised the same under section 36 (1) (a) and (b) and (2) of the Land Disputes Courts Act, Cap 216, R.E 2002. After considering the submission of the applicant which was not challenged as the respondent failed to file his reply in the District Tribunal, the application for revision filed in the District Tribunal was dismissed for want of merit. The appellant was aggrieved by the decision of the District Tribunal and decided to file the present appeal in this court to challenge the decision of the District Tribunal basing on the following grounds:-

- 1. The Tribunal erred in law and fact in holding the appellant could appeal against the decision of the Ward Tribunal while the appellant was not a party to the proceedings in the Ward Tribunal.*

*2. The tribunal erred in law and fact by failing to examine whether the Ward Tribunal had the requisite jurisdiction to entertain the dispute.*

When the appeal came for hearing the appellant was represented by Mr. Deogratius Tesha, learned advocate and as stated earlier the appeal was heard ex parte against the respondent. The counsel for the appellant told the court in relation to the first ground of appeal that, the proceedings of Tuangoma Ward Tribunal in Land Case No. 381/10/2018 was registered in the name of one Zefania Amos acting on behalf one Nganga Maduhu Nkonya. He said the evidence adduced before the Ward Tribunal shows there was a certificate of title registered in the name of Goldenrule Company Limited.

He argued that, the Ward Tribunal's Chairperson misconceived the concept of separate corporate personality which is defined in the celebrated case of **Austack Alphonse Mushi V. Bank of Africa Tanzania Ltd & Another**, Civil Appeal No. 373 of 2020, CAT at Mbeya (unreported) where it was stated a company is a distinct person separate from its members or shareholders. He went on arguing that, the District Tribunal's Chairperson misconceived in law by holding that the appellant had a right to appeal against the decision of the Ward Tribunal while the appellant was not a party in the Ward Tribunal's proceedings.

He referred the court to the case of **Jackline Ntuyabaliwe Mengi V. Abdiel Reginald Mengi & Two Others**, Civil Application No. 332/01 of 2021, CAT at DSM (unreported) where when the Court of Appeal was considering the issue of right of appeal vis a vis right of revision it stated a person who is not a party in any proceedings has no right of appeal but he has a right of seeking for the proceedings to be revised.

He argued in relation to the second ground of appeal that, the certificate of title tendered before the Ward Tribunal as evidence shows the land in dispute comprised of 6.5 Hectares which was granted for building a secondary school. He submitted that, before section 15 of the Land Disputes Courts Act, Cap 216 R.E 2002 being amended by the Written Laws (Miscellaneous Amendment Act), (No. 3) Act No. 5 of 2021 the pecuniary jurisdiction of the Ward Tribunal on disputes relating to land matters was not more than Tshs. 3,000,000/=.

He supported his submission with the case of **Yanga Mhogela V. Buzurizuri Gasson & Three Others**, Misc. Land Case Appeal No. 70 of 2018, HC at Mwanza (unreported) where the issue of pecuniary jurisdiction of the Ward Tribunal to entertain land disputes was considered. He also referred the court to the case of **Kimonidimitri Mantheakis V. Ally Azim Dewji & Seven Others**, CAT at DSM where the procedures for visiting locus in quo was stated.

He stated that, if the procedures for visiting locus in quo was followed it would have been seen the land in dispute was comprising of several block buildings in the form of secondary school which its value cannot be at Tshs. 3,000,000/=. He based on the above stated reasons to pray the court to quash and set aside the ruling of the District Tribunal and that of the Ward Tribunal for want of pecuniary jurisdiction.

The court has carefully considered the submission made to the court by the counsel for the appellant in relation to the appeal filed in this court by the appellant and it has also gone through the record of the matter. The court has found the issues to determine in this appeal as can be deduced from the grounds of appeal are whether the District Tribunal's Chairperson erred in holding the appellant could appeal against the decision of the Ward Tribunal and whether the Ward Tribunal had requisite jurisdiction to entertain the dispute.

Starting with the first issue the court has found it is not disputed that the appellant in the appeal at hand was not a party in the proceedings of the Ward Tribunal and the parties in the Ward Tribunal were Zefania Amosi acting on behalf of Nganga Maduhu Nkonya versus Frank Urassa. The court has also found it is undisputed fact that the dispute between the parties was about the allegation that the respondent had trespassed into the land registered in the appellant's name. That being undisputed facts the court has found the issue to determine here is whether the

appellant who was not a party in the proceedings of the Ward Tribunal could have appealed against the decision of the Ward Tribunal to the District Tribunal.

The court has found that, as rightly argued by the counsel for the appellant, the appellant could have not appealed against the decision of the Ward Tribunal as the appellant was not a party in the proceedings conducted by the Ward Tribunal. To the understanding of this court a person who can appeal against any decision, is a person who was a party in a proceeding of an impugned decision and not a stranger. The remedy available for such a person is an application for revision. The above finding of this court is getting support from the case of **Jackline Ntuyabaliwe Mengi** (supra) cited by the counsel for the appellant and the case of **Ahmed Ally Salum V. Ritha Baswali**, Civil Application No. 21 of 1999, CAT at DSM (unreported) where it was stated in the latter case that:-

*"... as the applicant was not a party to the court proceedings, he could have not appealed and that revision was his only remedy."*

From what was stated in the above cited cases it is crystal clear that, as the appellant was not a party in the proceedings of the Ward Tribunal, she could have not appealed against the decision of the Ward Tribunal. The only remedy available for her was to seek for the decision

of the Ward Tribunal to be revised if she thought there was sufficient ground for moving the court to exercise its revisional jurisdiction.

The court has considered the holding made by the Chairman of the District Tribunal that the appellant was supposed to appeal against the decision of the Ward Tribunal as is the one opted to file the case before the Ward Tribunal the way it was filed but failed to see legal basis in the said holding. The court has arrived to the above finding after seeing that, although the case was filed before the Ward Tribunal by Zefania Amos on behalf of Nganga Maduhu Nkonya and the said Nganga Maduhu Nkonya was the appellant's officer but it cannot be said the appellant could have appealed against the decision of the Ward Tribunal.

The court has also arrived to the above finding after seeing that, as stated in the case of **Austack Alphonse Mushi** (supra) cited to the court by the counsel for the appellant, the appellant is a distinct person from the officer of the appellant mentioned hereinabove. As the appellant is a distinct person from the officer instituted the dispute before the Ward Tribunal, the appellant had a right to file revision in the District Tribunal against the decision of the Ward Tribunal and not to appeal as held by the Chairman of the District Tribunal. Therefore, the District Tribunal erred in holding the appellant was supposed to appeal against the decision of the Ward Tribunal and not to apply for revision of the decision of the Ward Tribunal.

Coming to the second issue which states whether the Ward Tribunal had requisite jurisdiction to entertain the dispute the court has found that, jurisdiction of the Ward Tribunal to entertain civil matters relating to land is provided under section 15 of the Land Disputes Courts Act, Cap 216 R.E 2019. The cited provision of the law states the jurisdiction of the Ward Tribunal in land disputes is limited to three million shillings. That being the position the court has considered the submission by the counsel for the appellant that, as the land in dispute is a registered land of about 6.5 Hectares and comprising blocks building for secondary school it cannot be said its value is at three million shillings.

The court has found that, although it is true that there is a copy of certificate of occupancy tendered before the Ward Tribunal which support what was said by the counsel for the appellant but the court has found the record of the matter shows the dispute filed before the Ward tribunal was not about the whole land comprised in the said certificate of title. The court has found the dispute was on the boundary of the land occupied by the appellant and the land occupied by the respondent which its value is not stated anywhere so as to say the Ward Tribunal had no requisite jurisdiction to entertain the dispute.

The court has gone through the case of **Yanga Mhogeja** (supra) cited by the counsel for the appellant to support his submission but find the said case is distinguishable from the case at hand. The court has found



in the cited case the dispute was over 200 Hectares of farm while the dispute in the case at hand is on boundary of the land of the parties in the dispute. The court has also found even the case of **Kimonidimitri Mantheakis** cited to the court by the counsel for the appellant has not managed to establish the Ward Tribunal had no requisite jurisdiction to entertain the matter.

The court has come to the above finding after seeing that, the argument by the counsel for the appellant that if the Ward Tribunal followed the required procedure for visiting a locus in quo would have found the land in dispute had block buildings for secondary school which its value is not at three million shillings prescribed for jurisdiction of the Ward Tribunal but found the said argument has not managed to establish the land in dispute has a value which was beyond the pecuniary jurisdiction of the Ward Tribunal. The reason for coming to the above finding is because the dispute between the parties was not over the whole land occupied by the appellant but the dispute is only on boundary of the lands occupied by the parties.

Having found it has not been established the Ward Tribunal had no requisite jurisdiction to entertain the dispute and after seeing there is no any other error apparent on the face of the decision and proceedings of the Ward Tribunal which would have moved the court to step into the shoes of the District Tribunal the court has found that, despite the fact

that the court has found the appellant had a right to apply for revision of the Ward Tribunal but there is no justifiable reason which can make this court to quash and set aside the decision of the District Tribunal and that of Ward Tribunal as prayed by the counsel for the appellant.

In the premises the appeal of the appellant is hereby dismissed for being devoid of merit and as the appeal was heard ex parte no order as to costs. It is so ordered.

Dated at Dar es Salaam this 31<sup>st</sup> day of May, 2022.



I. Arufani

**JUDGE**

31/05/2022

**Court:**

Ex parte judgment delivered today 31<sup>st</sup> day of May, 2022 in the presence of Mr. Deogratius Tesha, advocate for the appellant and in the absence of the respondent who has failed to appear in the court after being dully served. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

**JUDGE**

31/05/2022