

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 257 OF 2020

DIGNER MASAWE.....1<sup>st</sup> APPELLANT  
LUCAS FILIMON DUMA.....2<sup>nd</sup> APPELLANT  
ELIZABETH KISUKARI.....3<sup>rd</sup> APPELLANT

VERSUS

MICHAEL RAPHAEL.....1<sup>st</sup> RESPONDENT  
ELIZABETH MICHAEL.....2<sup>nd</sup> RESPONDENT

JUDGMENT

03/03/2022 & 19/05/2022

**Masoud, J.**

The appellants lost in their appeal in the District Land and Housing Tribunal for Kinondoni at Mwananyamala. All grounds of appeal raised in such appeal that, the trial ward tribunal erroneously failed to follow instruction of the District land and Housing Tribunal in Consolidated Land Appeal No. 109 of 2017, Land Appeal No. 107 of 2017, Land Appeal No. 108 of 2017 requiring the buyer and the vendors to be joined as necessary parties; and that the trial ward tribunal wrongfully disregarded the objection by the appellants, failed and the appeal was thus dismissed with costs.

In this second appeal, the appellants complained that, the Hon. Chairman failed to consider the opinion of the assessors and no reason for his departure was given; that the Hon. Chairman erroneously departed from the decision of Hon. Lung'wecha in his consolidated ruling despite having concurrent power; that Hon. Chairman failed to consider that the objection of joining vendor and purchaser was raised at earliest stage at the ward tribunal; and that Hon Chairman failed to consider that Kwambe Ward Tribunal lacked pecuniary jurisdiction.

In their written submission in chief in support of the appeal, the appellants expounded on the grounds of complaints. They cited a number of authorities in relation to the arguments made for the grounds of appeal. They invited the court to allow the appeal on the said grounds of complaints.

The respondents opposed the appeal. Their detailed submission in reply was in a nutshell to the effect that the grounds of complaints were all without merit. As was the appellant, the respondent also referred the court to several authorities to support his position.

There was rejoinder submission by the appellant which at best reiterated the view taken in the submission in chief that the appeal was not meritorious.

My scrutiny of the rival arguments by both parties in all the grounds of appeal led to conclusion that there were only four issues which I need to determine to dispose of the appeal.

The first is whether the Hon. Chairman considered the opinion of the assessors and gave reasons for his departure from the said opinion. In respect of this issue, section 24 of the Land Disputes Courts Act, cap. 216 R.E 2019 was at the heart of the rival arguments as was the case of **Selina Kea v Marugwe Gwarai**, Land Appeal No. 43 of 2019.

The second issue is whether the Hon. Chairman erred in departing from the decision of the district tribunal in the consolidated ruling. In respect of this issue, there was the case of **Miburo Cosmas vs Republic**, Criminal Appeal No. 519 of 2016 CA, on *fuctus officio*, as well as the case of **Omary Abdallah Kilua v Rashid Mtunguja**, Civil Appeal No. 178 of 2019 CA on directive given by a superior court which has to be complied with which were referred to me.

The third issue is whether the Hon. Chairman did not consider the objection of failing to join the vendor and purchaser which was raised at earliest stage at the ward tribunal. The case of **Juma B. Kadala Laurent Mnkanda** [1983] and the case of **Abdi M. Kipoto vs Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017. The two cases are on the requirement of joining a vendor in suit land involving a piece of land he sold.

And lastly, whether the tribunal erred by failing to consider that the trial tribunal lacked jurisdiction in the original land case No.62 of 2018 dated 23/05/2022. The cases of **Friendship Textile Co. Ltd v Our Lady of Usambara Sisters** [2006] TLR 70; **Meneja Kiwanda cha Saruji v Hermelinda Joseph Bikongoro**, Misc. Land Case Appeal No. 10 of 2020 HC, and **Lidya Raisi Ngochero v Seleman Mohamed Mkanganyo**, Land Appeal No. 8 of 2020 on pecuniary jurisdiction were cited by the appellant. On the part of the respondent, they relied on section 15 of the Land Disputes Courts Act, cap. 216 R.E 2019 which provides for the pecuniary jurisdiction of the ward tribunal.

I gleaned on the impugned decision. At page 6 of the typed judgment, the Hon. Chairman was clear about the position taken by the assessors in their opinion. In so doing, the Chairman observed that the said opinion

supported the appellant's complaint. It is thus apparent that the Hon. Chairman considered the assessors' opinion.

As to whether or not the Hon. Chairman stated that he departs from the opinion, I was keen to read the impugned judgment from page 6 to page 8. I was satisfied that in the said part of his judgment, the Chairman showed in clear terms that he departed from the opinion of the assessor which was in favour of the appellant's complaint. The Chairman further gave extensive reasons for the position he took, which he clearly stated that it supported the respondents' position and thus not appellants' position.

It follows that the reasons for the position the learned Chairman took also explained the reason behind his departure from the assessors' opinion. In my finding, the Hon. Chairman did comply with the requirements of section 24 of the Land Disputes Courts Act (supra). I will as a result answer the first issue in the affirmative. Consequently, the first ground of appeal is without merit. It accordingly fails.

The decision of the district tribunal as per Hon. Lung'wecha in consolidated ruling for Appeal Cases No. 109 of 2017, No. 107 of 2017,

and No. 108 of 2017, which I was told by the appellant that it ordered joinder of necessary parties in a suit relating to the disputed land. Indeed, the decision relied heavily on the case of **Juma B. Kadala v Laurent Mkande** (supra). The argument was that the trial tribunal was bound by the said decision. Thus, the appellate tribunal should have so found when it entertained the first appeal.

In so far as the case of **Juma B. Kadala** is concerned as was also very well observed by this court in **Alloyce Kisenga v Hamida Ramadhani Manara and Others**, Land Case No. 3 of 2015, the Hon. Chairman was right I think in his reasoning that the order predicated on the fact that the seller was in the possession of the disputed land which made him the necessary party in the case. I think the understanding of the order of the district tribunal as per Hon. Lung'wecha has to be understood in that context.

In his further reasoning, Hon Chairman (Hon. Wambili) had it, rightly in my view, that it was not shown on the record that the vendors of the suit land in the instance matter were still in actual possession of the suit land and that no effective be passed in their absence, which means that the order as per Lung'wecha could not apply.

If one were to look at the record of the trial ward tribunal will find that the tribunal were satisfied that no interests of the vendors were at stake even if the suit was decided in favour of either party and hence the matter before it was not within the scope of a necessary party envisaged in the ruling of the district tribunal as per Hon. Lug'wecha. I am settled with this view because the trial ward tribunal in its reasoning had it that the vendors were nowhere to be seen and could not be traced, which fact has not been contested by the appellants.

If I were to add, I would also agree with Hon. Wambili that the record of the ward tribunal does not clearly show that the appellants, who fully participated in the ward tribunal and had their witnesses heard, complained about non-joinder of the vendors. The issue about non-joinder of vendor was only clearly raised in the first appellate tribunal. On the above findings, I was guided by the decision of the Court of Appeal in **Abdi M. Kipoto v Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017 referred to me by the respondents.

In so far as the second issue is concerned, I would thus answer it in a manner that finds no merits in the second ground of appeal. Accordingly, the second ground of appeal fails for reasons already stated herein above.

As to the third issue that Hon. Chairman failed to consider the objection in relation to the failure to joining vendor and purchaser, which was raised at earliest stage at the ward tribunal, I examined the record of the trial ward tribunal. In so doing, I was mindful of the findings of Hon. Wambili that the objection was not raised at earliest opportunity possible at the ward tribunal and that it was not proper to determine the issue in the appeal. My scrutiny was apparent that the objection was not raised as there is nothing in the record of trial ward tribunal in that regard.

The last issue in away relate to the above. It is about the complaint that the trial tribunal did not have pecuniary jurisdiction to determine the matter. This was neither raised in the trial ward tribunal nor raised in the first appellate district tribunal. It is thus a mere afterthought as was the point relating to the third issue herein above which were raised after the appellants had submitted themselves to the jurisdiction of the ward tribunal in which they were heard and allowed to call witnesses. When dealing with similar situations, the Court of Appeal in **Abdi M. Kipoto** (supra), stated that it sufficient if the record has it that parties submitted themselves to the pecuniary jurisdiction of the ward tribunal.



The issue of pecuniary jurisdiction would require evidence if the court were to ascertain it. On the record there is nothing other than the purchase price of sums of money falling within the pecuniary jurisdiction of the ward tribunal, which was not on the record disputed as the proper basis of ascertaining the pecuniary jurisdiction of the ward tribunal. Matters for consideration alleged to be fit the ascertainment of the pecuniary jurisdiction of the trial ward tribunal were I think mere assertions from the bar in relation to which there was no value assigned on the record. I cannot allow myself to take evidence on the matter at this stage of the second appeal.

Consequently, I would answer the third and fourth issue against the appellants. In similar manner, I find that the third and fourth grounds of appeal lacks merits. They should accordingly fail.

In the upshot of the above findings on the raised grounds of appeal, I am of a settled conclusion that the appeal was filed without having merit. It is thus dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 19<sup>th</sup> day of May 2022.

  
B. S. Masoud  
**Judge**

