

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

**LAND APPEAL CASE NO. 2 OF 2022**

**MIKALI ABDUEL MSUYA.....1<sup>ST</sup> APPELLANT**

**YOSEA HERMAN MSUYA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**MAENDELEO BANK TANZANIA PLC.....1<sup>ST</sup> RESPONDENT**

**BEST GROUP (T) LIMITED.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

*Date of last Order: 4/4/2022*

*Date of Judgment:28/04/2022*

**T. N. MWENEGOHA, J.**

The Appellants filed the present appeal against the decision of DLHT for Morogoro in Application No 572 of 2020 with two grounds of appeal namely

- 1) That the Hon. Chairman erred in law and in fact in dismissing the application which he did not hear on merits.**
- 2) The Hon. Trial Chairman erred in law and in fact in not making the appropriate order commensurate with the law.**

The appeal was conducted by way of written submission whereby Samson Edward Mbamba, Advocate represented appellants and James Bwana Advocate represented the respondents.

In his submission, Mr. Mbaba contended that the Hon. Trial Chairman erred in law and in fact in not making the appropriate order commensurate with the law. It was his argument that the Chairman dismissed the application on the ground that the Tribunal had no jurisdiction.

He further submitted that the pleadings before the Tribunal, demonstrate that the appellant challenged the sale of the suit premises by praying for relief on suit property as reflected by a decree where it stated what the appellant prayed for that the prayers were:-

1. Nullification of sale made by the 1# and 2nd respondents for failure to adhere to the underlined legal procedures.
2. An order for declaration that the respondent's acts are null and void therefore the said sale nullified and permanent injunction restraining the respondents from disposing the suit property and evicting the applicants.
3. Perpetual injunction be issued to restrain the respondents from transferring title as well as ownership eviction, leasing trespassing and disturbing the applicants in any way from peaceful occupation of the disputed plot".

It was the appellant's submission that through the stated prayers found in the pleadings, the dispute was a land dispute as it was complaint of sale of land (suit premises) and therefore, within the jurisdiction of the District Land and Housing Tribunal.

In reply Mr. Bwana submitted that the matter before the trial Tribunal was on one hand supposed to be lodged at the High Court of Tanzania Land Division and on the other hand it was not a land dispute.

That the Application before the trial District Tribunal was purely on issues related to Mortgage, as they were seeking the nullification of the sale of the mortgaged property as per entire paragraph 7 (a) of the said Application and the reliefs sought at the trial District Tribunal.

It was his argument that even the issues for determination framed before the trial District Tribunal reveals that the matter before it was not a land dispute. He listed issues to be whether the public auction conducted was legal and the reliefs the parties are entitled with.

He submitted that from the above framed issues it is evident that the claim before the trial District Tribunal did not concern land but only challenged the public auction conducted. Therefore, it was not a land dispute. Thus, the dismissal order commensurate with the law of jurisdiction.

In addressing this ground of the appeal, I have noted that the respondent's counsel is partly in agreement that the matter at the Tribunal has land matter element, however, it is his contention that it should have been filed at the High Court.

As it has been well started by the applicant's counsel in order to determine whether it is land matter or not one has to look at the reliefs claimed, and having gone through the said reliefs, it is clear that it is land matter.

Therefore, the Tribunal's finding is hereby quashed and set aside for the stated reasons.

Having found the 2<sup>nd</sup> ground to have merit I see no need to dwell on the remaining ground.

The Tribunal's finding is hereby quashed and set aside. Parties are at liberty to institute a fresh case if they wish to do so.

It so ordered.

  
**T. N. MWENEGOHA**  
**JUDGE**

