

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

MISC. LAND APPEAL NO. 122 OF 2021

(Arising from the decision of Kinondoni District Land & Housing Tribunal at Mwananyamala in Land Appeal No. 65 of 2020; Originating from Goba Ward Tribunal in Land Application No. 34 of 2019)

JOHN MSABAHA TWAWAKALI..... APPELLANT

VERSUS

MOHAMED MBEZI.....RESPONDENT

Date of Last Order: 07.06.2022
Date of Judgment: 25.07.2022

JUDGMENT

V.L. MAKANI, J.

This is a second appeal. The appellant **JOHN MSABAHA TWAWAKALI** unsuccessfully sued the respondent at Goba Ward Tribunal (the **Ward Tribunal**) in Land application No, 34 of 2019. He appealed to the District Land and Housing Tribunal for Kinondoni (the **District Tribunal**) vide Land Appeal No. 65 of 2020 (Hon. S. H. Wambili, Chairperson) but he lost again. Being dissatisfied with the decision of the District Tribunal the appellant has filed this appeal on the basis of the following grounds of appeal:

- 1. That the District Tribunal sitting in its first appellate jurisdiction erred in law and facts for failure to quash the decision of the ward tribunal and order that the suit land is a public way used by the appellant for more than 12*

years as from 2009 when the appellant purchased his plot and respondent is a trespasser to the suit land.

- 2. That the District Tribunal erred in law and fact for its failure to ascertain the sizes and boundaries of plots owned by both parties to the suit.*
- 3. That the District Tribunal erred in law and fact for its failure to order the joining of vendors of plots at the suit land as parties to the suit land namely FRANK N. KIMARO, AGNESS SENYE and JOHN SENYE.*
- 4. That the District Tribunal erred in law and facts when it failed to properly re-evaluate evidence as such reached unfair, unjust and wrong decision.*

The appellant has prayed for the appeal to be allowed and the decisions of the Ward and District Tribunals be quashed and set aside.

With leave of the court the appeal was argued by way of written submissions. The appellant personally drew and filed his own submissions; while Mr. Faraji Mangula, Advocate drew and filed submission in reply on behalf of the respondent.

On the first and second grounds of appeal, the appellant said that the public way (the **suit land**) has been used by the public for more than 12 years. He said the Ward Tribunal was not certain if the suit land was legally owned by respondent. He said he has possessed the suit

land for a long time and he relied on the case of **Musa Selemani Mkumulwa vs Aweso Husein & 3 Others, Land Appeal No.30 of 2006 (HC-Tanga)** (unreported).

On the third ground of appeal, the appellant said that in the suit for recovery of land the buyer should be joined with the seller as a necessary party. That non-joinder is fatal to the proceedings.

On the last ground of appeal, he submitted that the Ward Tribunal failed to declare the appellant the owner of the suit land considering that appellant had for a long time been in undisputed possession of the suit land. The appellant sought assistance from a number of cases amongst being the case of **Simon Osita vs. Adrjanus Serere (1968) HCD 21**. He said that the District Tribunal ought to have re-evaluated the evidence tendered before it and identify what occasioned injustice on the part of the appellant. He therefore prayed for the appeal to be allowed with costs.

In reply, Mr. Mangula stated the brief history of the matter. As for the merit of the appeal he submitted that all grounds of appeal are new as they were not raised in the first appeal, that is, at the District

Tribunal. He said that it is trite law is that new grounds of appeal cannot be introduced in the second appeal. He relied on the cases of **Halid Maulid & Another vs. Republic, Criminal Appeal No.342 of 2020 (CAT-Dodoma)** and **Omary Kassim Mbonde vs. The Republic, Criminal Appeal No.175 of 2016 (CAT-DSM)**. He insisted that this court cannot entertain this appeal as all four grounds of appeal were not raised at the District Tribunal. He prayed for this appeal to be dismissed with costs.

The applicant did not file any submissions in rejoinder.

I have gone through the submissions, and the main issue for consideration is whether the appeal at hand has merit. As correctly pointed out by Mr. Mangula, the appellant has raised new grounds of appeal which were not discussed and determined by the District Tribunal. It is a settled principle of the law that at an appellate level the court only deals with matters that have been decided upon by the lower court. There are many authorities on this point for instance **Hassan Bundala @ Swaga vs. Republic, Criminal Appeal No. 386 of 2015 (CAT-Bukoba)** (unreported), **Hotel Travertine Limited & 2 Others vs. National Bank of Commerce Limited**

[2006] TLR 133 and James Gwagilo vs. The Attorney General, Civil Appeal No. 67 of 2001 (unreported). Specifically, in **Hotel Travertine Limited** (supra) the Court stated that:

"As a matter of general principle an appellate court cannot allow matters not taken or pleaded in the court below, to be raised on appeal".

(Also see **Halid Maulid & Another** (supra), **Galus Kitaya vs. Republic**, Criminal Appeal No.196 of 2015, **Emmanuel Josephat vs Republic**, Criminal Appeal No.323 of 2016 (all unreported).

In the present matter, the appellant herein who was also appellant in the District Tribunal had only one ground of appeal, that is, the Ward Tribunal was improperly constituted. There was nothing else which was argued and determined. However, in this present appeal, the appellant has raised four grounds of appeal (as seen above), and they are completely distinct from the ground that was raised and argued at the District Tribunal. In that regard the grounds raised by the appellant in this appeal cannot be considered on account that they were not raised and determined by the District Tribunal and are in my view an afterthought.

I subscribe to the case of **Hassan Bundala's** where the Court of Appeal emphasized that:

"...it is now settled that as a matter of general principle this court will look in to matters which came up in the lower court and were decided; not on matters which were not raised nor decided by neither the trial court nor the high court on appeal"

In the same vein and the for the reasons stated above, the appeal has no merit and I proceed to dismiss it with costs.

It is so ordered.



V.L. Makani

**V.L. MAKANI
JUDGE
25/07/2022**