

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 10 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Temeke at Temeke in Land Appeal No. 21 of 2021 Hon. Chinyele-Chairperson)

HUSSEIN Y. UGULUM APPELLANT

VERSUS

RAJABU Y. LUKALI.....RESPONDENT

Date of last order: 4/8/2022

Date of Judgment: 12/8/2022

JUDGMENT

A. MSAFIRI, J.

In this appeal the above named appellant was aggrieved with the decision of the District Land and Housing Tribunal for Temeke at Temeke (the DLHT), exercising its appellate jurisdiction over Land Matter No. 10 of 2018 of Pemba Mnazi Ward Tribunal (the trial Tribunal).

A brief background is apposite. Before the trial Tribunal the above named respondent instituted *Shauri la Madai* No. 10 of 2018 against the appellant alleging him to have trespassed on his shamba measuring about 3.5 acres (the disputed land). It was alleged before the trial Tribunal that the respondent had acquired the disputed land since 2003 and the same

Alle

was surveyed. On the other hand the appellant claimed to have purchased the disputed land sometimes on 2/9/2010 from one Jidawi Hamisi.

After hearing the parties, the trial Tribunal decided in favour of the respondent herein and he was declared as the lawful owner of the disputed land. The decision of the trial Tribunal did not amuse the appellant hence he lodged Appeal No. 21 of 2021 before the DLHT in which initially a total of 6 grounds were raised but later on he was granted leave to add another grounds of appeal, therefore a total of 12 grounds were raised by the appellant.

It is on record that the appeal before the DLHT was heard and determined in the absence of the respondent as he did not enter appearance. After hearing the appeal, the DLHT was of the view that the trial Tribunal's coram was not shown on the proceedings rather it was only shown on the judgment hence *trial denovo* was ordered before the trial Tribunal.

The appellant was aggrieved with the decision of the DLHT sitting on the first appeal hence he preferred the present appeal with **six (6)** grounds of appeal as follows;

- 1. That the District Land and Housing Tribunal for Temeke (DLHT) sitting as first appellate Court having ruled in favour of the appellant that the respondent failed to prove his ownership of the alleged land before the Ward Tribunal, it finally erred in law and in facts to order the dispute be taken back to the Ward Tribunal for retrial.* *ALLS.*

2. *The District Land and Housing Tribunal for Temeke (DLHT) erred in law and facts to hold that the Pemba Mnazi Ward Tribunal had jurisdiction to handle the land in dispute.*
3. *The District Land and Housing Tribunal for Temeke DLHT erred in law and facts for not agreeing that there were no facts made by the Respondent conferring pecuniary jurisdiction to the Ward Tribunal.*
4. *The District Land and Housing Tribunal for Temeke erred in law and fact to rule that sale agreement on private land must be witnessed by the local government leader.*
5. *The District Land and housing Tribunal for Temeke (DLHT) wrongly rejected the appellant point on ground of appeal that the Ward Tribunal wrongly shifted the burden of proof to the Appellant (the respondent by then).*
6. *That the order for retrial by District Land and Housing Tribunal for Temeke (DLHT) is otherwise illegal and impracticable as it contravene the provisions of the Written Laws (Miscellaneous Amendments) (No 3) Act, 2021 to which the Ward Tribunal has ceased to be a trial court on land matter.*

Before this Court, the appellant prays for the order for retrial be vacated and he be declared a lawful owner of the disputed land.

When this appeal was called on for hearing on 4/8/2022 Mr. Killey Mwitasi learned advocate appeared for the appellant whereas the respondent did not enter appearance. The appeal was disposed of orally. *Alle.*

Mr. Mwitasi consolidated grounds 1 and 6 above and submitted that the DLHT was wrong for ordering a retrial after finding that the respondent had failed to prove his ownership of the disputed land and the location of the same. The appellant contended that it was not proper for the DLHT to order a retrial because in view of the amendments brought by the Written Laws Miscellaneous Amendment Act No. 3 of 2021, the Ward Tribunals have ceased to be trial courts but they provide for amicable settlement. Hence taking back the matter to the trial Tribunal is impracticable.

On grounds 2 and 3 Mr. Mwitasi submitted that there was no any statement which indicated the value of the disputed land before the trial Tribunal. According to the learned advocate, failure to indicate the value of the disputed land was fatal because before adjudicating on any matter the Court must ascertain that it has jurisdiction to try a particular matter.

On ground 4 the learned advocate faulted the DLHT for holding that sale of land must be approved by the local government while in fact the appellant's agreement in which he purchased the disputed land was just a private agreement regulated by the Law of Contract Act.

The learned advocate finally prayed the 8th ground of appeal before the DLHT be upheld and the order for retrial be vacated the appellant be left undisturbed on the disputed land.

In determining the appeal before me, I will start with the issue of not indicating the members who presided over the matter before the trial Tribunal.

Adls.

This point was raised by the appellant before the DLHT in which it was contended that the record of the trial Tribunal did not reveal the members who presided over the matter. The members have been indicated only on the judgment while on the proceedings it has not been indicated who presided over the matter. The judgment of the trial Tribunal shows clearly that there were 6 members who also signed the judgment.

I have keenly gone through the handwritten proceedings of the trial Tribunal, admittedly the names of the members who presided over the matter have not been revealed. It is indicated that on 13/9/2018 was the first day for hearing of the matter but the names of the members have not been shown. Admittedly the proceedings cast a very grave doubt as they do not tally with the judgment. For instance on page 5 of the typed judgment of the trial Tribunal indicates that trial Tribunal visited the *locus in quo* but the proceedings do not indicate whether the visit of *locus in quo* was done and on which date and who attended and what transpired on the locus in quo.

It follows therefore that apart from the proceedings not indicating the members who presided over the matter, they do not tally with the judgment arising therefrom. Not indicating the names of the members whom presided over the matter was a serious omission which vitiated the entire matter before the trial Tribunal. It was not enough to indicate those names on the judgment alone, but on the proceedings on each date the matter was scheduled for hearing.

Atts.

It casts a grave doubt whether the members shown on the judgment are the ones who presided over the matter. Rightly the DLHT nullified the judgment and proceedings of the trial Tribunal. This alone would be sufficient to dispose of the appeal before me. However I wish to address a few aspects.

The learned advocate has faulted the DLHT as at one level it nullified the proceedings and at another it dealt with the matter on merit. Relevancy to this is on the proof of ownership of the disputed land. I am of the settled mind that having found that the matter before the trial Tribunal was marred by serious irregularities resulting to nullification of the same, the learned Chairperson sitting on the first appeal should have avoided touching on the matters of evidence otherwise that would amount to preempting and prejudice the fresh trial. So I find substance on the submission by the learned advocate for the appellant on this point.

The learned advocate for the appellant has touched on the viability of the order for retrial stating that with the inception of the Written Laws Miscellaneous Amendment Act No. 3 of 2021. Through such amendment section 13 of the Land Disputes Courts Act [CAP 216 R.E 2019] was amended and the Ward Tribunals were stripped off the powers of adjudication and instead they are only tasked with mediating the parties.

The learned advocate for the appellant contended that with the new amendment the matter cannot be retried there again as per the law. Much as I may agree with the learned advocate, truly the Ward Tribunals have no powers of adjudication as they used to enjoy before, but currently they *ACUs.*

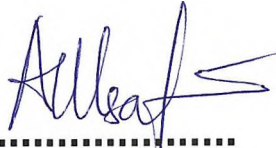
have powers to mediate the parties within 30 days failure of which the matter has to be referred to the District Land and Housing Tribunal for adjudication. That does not mean the matter at hand cannot be dealt with as per the current procedure after amendments.

The appellant has prayed that he be declared as a lawful owner of the disputed land and the order for retrial be vacated. Now with the nullification of the proceedings and judgment of the trial Tribunal by the DLHT and as I hereby uphold there is nothing left for the appellant to be declared as a lawful owner of the disputed land.

The issue left is what the way forward, the appellant before the DLHT as well as before me is suggesting that the value of the disputed land exceeds the pecuniary jurisdiction of the trial Tribunal. Now be it that way parties are at liberty to institute a fresh matter before the Court of competent jurisdiction. Appeal partly allowed. In the event I will make no order as to costs.

It is so ordered.




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A. MSAFIRI,
JUDGE
12/8/2022