

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE DISTRICT REGISTRY OF MUSOMA)

AT MUSOMA

LAND APPEAL No. 9 OF 2023

*(Originating from the District Land and Housing Tribunal for
Mara at Tarime in Land Application No. 3 of 2021)*

FROLA ATIENO AKULO APPELLANT

Versus

FREDRICK OLUOCH AYIERA RESPONDENT

JUDGMENT

04.04.2023 & 04.04.2023

Mtulya, J.:

Mr. Fredrick Oluoch Ayiera (the respondent) had approached the **District Land and Housing Tribunal for Mara at Tarime** (the tribunal) on 26th March 2021 and preferred **Land Application No. 3 of 2021** (the application) claiming that he had entered into contract with **Frola Atieno Akulo** (the appellant) on 2nd February 2013. According to the respondent the terms of the contract had required him to build a house at his own expenses for consideration of six (6) hectares of land.

In his complaint before the tribunal, the respondent claimed that he took steps on his part to complete the house as per terms of the contract, but the appellant had declined to furnish

him the six (6) hectars of land. In his prayers at the tribunal, the respondent prayed the tribunal to declare the appellant had breached the contract entered on 2nd February 2013 and order the appellant to give the six (6) hectars of land him. The contract was attached in **Land Application Form** (the form) and tendered during the hearing of the application as Exhibit P.1 (the exhibit)

The exhibit has a bunch of witnesses who were present during signing of the contract, but lacked the details of the agreed six (6) hectars of the land, in terms of location and boundaries surrounding the land, as per requirement of the law enacted in Regulation 3 (2) (b) of the **Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003** (the Regulations) and the commonly cited precedent in **Hassan Rashid Kingazi & Another v. Halmashauri ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021.

After full hearing of the case, the tribunal had resolved in favor of the respondent. However, the reasoning of the tribunal at page 8 of judgment, is quietly baffling. For easy appreciation of its text at page 8 of the judgment, the following extract is quoted:

Kuhusu makubaliano kati yao kuwa Mjibu Maombi atampa Mleta Maombi ekari 6, kama ilivyo katika maombi, hili halina ushahidi wowote kwani Mleta Maombi hajaleta shahidi kuthibitisha hilo na hajatoa sababu za kwa nini hakuleta mashahidi wakati kielelezo P.1 kimesheheni mashahidi. Kwa vile hakuna ushahidi wa makubaliano ya kupeana ekari 6 kwa jengo lililojengwa, Mleta Maombi anastahili kulipwa gharama za kuendeleza nyumba hiyo kwa gharama za sasa.

The judgment of the tribunal aggrieved the appellant hence rushed to this court to file **Land Appeal No. 9 of 2023** (the appeal) complaining, in totality of reasons, that the tribunal erred in law and fact for failure to consider and critically evaluate evidences produced by the parties during the hearing of the application.

Today morning the appeal was scheduled for hearing in Chambers of this court, and after short conversations between the appellant and **Mr. Onyango Otieno**, learned counsel for the respondent, on the legality of the matter at the tribunal, it was vivid that the tribunal had determined civil suit in its jurisdiction contrary to the requirement of the law in section 3 (2) (c) of the **Land Disputes Courts Act [Cap. 216 R.E 2019]** (the Act) and

precedent of this court in **Shyam Thanki & Others v. New Palace Hotel** (1972) HCD 92 and **Pili Juma Bilali v. Abdullah Khalifa** [1986] TLR 201 and Court of Appeal in **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 and **Richard Julius Rukambura v. Isaack Ntwa Mwakajila & Another**, Civil appeal No. 2 of 1998.

According to Mr. Otieno, the tribunal was illegally moved without jurisdiction to resolve civil claim of civil nature in contract. In his opinion, the respondent claims costs for construction of house of the appellant and not ownership in land, and even if it was land dispute, land size and demarcations are not vivid on the record.

Regarding available remedies under such circumstances, Mr. Otieno prayed this court to allow the appeal and quash decision of the tribunal which wrongly determined civil case and if any party so wish to take proper course, he may do so in an appropriate forum.

The appellant on her part had blessed the submission of Mr. Otieno and briefly submitted that the respondent was not promised either interest in land or payment of costs of any house. In her opinion, the respondent took her light as a woman and lay person that could not take the contest to this court.

I have scanned the present record and noted submissions of the parties. The record is vivid that the respondent had filed civil case of contract claiming costs of construction of the house in the land registry. Reading paragraph 6 (a) (1) of the form on the cause of action, the display is on the claim of return of construction of building expenses. Similarly paragraph 7 (a) of the form on reliefs claimed, it reflects breach of contract entered on 2nd February 2013. From these indications, it is obvious that the tribunal was invited to determine civil case without mandate. In the precedent of **Shyam Thanki & Others v. New Palace Hotel** (supra), this court had resolved that:

...all courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is elementary that parties cannot by consent give a court jurisdiction which it does not possess.

In the present appeal is vivid that the parties have conferred jurisdiction to the tribunal contrary to the law. It is also unfortunate that from the record exhibit P. 1 was held to be of less value, but the tribunal went further and held that the appellant responsible for the costs of construction and ordered her to pay the respondent the unspecified amount as it is displayed at page 9 of the judgment, that:


*Mjibu Maombi amlipe Mleta Maombi fedha za
thamani ya nyumba yenye mgogoro ndani ya
siku 60 kuanzia leo.*

This order has two (2) faults, namely: first, it is in civil nature; and second, it is not certain and difficult to execute. In the circumstances of the present case, the submission of the officer of this court, Mr. Onyango, must be appreciated and granted and considered.

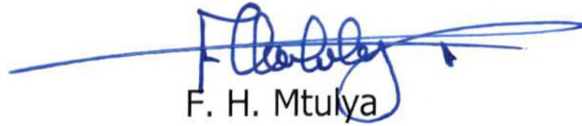
Having seen the fault material to the merit of the application which had occasioned miscarriage of justice, this court is moved to invoke section 43 (1) (b) of the Act to set aside proceedings, quash decision and any other order of the tribunal emanated in the application for want of proper record of the tribunal. I do so without costs. Any party who is still interested in the contest may wish to approach appropriate forum in accordance to the law.

It is so ordered.




F. H. Mtulya
Judge
04.04.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Flora Atieno Akulo** and in the presence of **Mr. Otieno Onyango**, learned counsel for the respondent, **Mr. Frederick Oluoch Ayiera**.



F. H. Mtulya

Judge

04.04.2023