

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
MISC. LAND APPEAL NO. 35 OF 2023**

(Arising from Judgment and Order of the District Land and Housing Tribunal
for Kinondoni in Land Appeal No. 27 of 2020 delivered by Hon. Chairman
Rugarabamu L. R dated 7th February, 2022)

ALMASI ABUBAKAR MLEWA APPELLANT

VERSUS

LAZARO PETER MGANGA RESPONDENT

JUDGMENT

Date of last order: 15.03.2023

Date of Judgment: 31.03.2023

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal for Saranga Land Dispute No.12 of 2020 and arising from the District Land and Housing Tribunal for Kinondoni in Land Appeal No.27 of 2021. The material background facts to the dispute are briefly as follows; Lazaro Peter Mganga, the respondent instituted a case at Saranga Ward Tribunal claiming that

he is the lawful owner of the suit land. The matter was decided in favour of the respondent. Aggrieved, the appellant lodged an appeal at the District Land and Housing Tribunal claiming that the Ward Tribunal had no pecuniary jurisdiction to determine the matter. The District Land and Housing Tribunal dismissed the appellant's appeal. The decision of the appellate Tribunal did not amuse the appellant. He decided to challenge it by way of appeal before this court on three grounds of appeal as follows:-

- 1. That, the trial Chairman erred in law and fact to entertain the matter without jurisdiction as the true value of the suit land was anticipated, but the true value of the suit land was unknown.*
- 2. That, the trial Chairman erred in law and fact to anticipate the true value of the land is more than Tshs. 3,000,000 instead of relying on the Valuation Report from the relevant authority.*
- 3. That the trial Chairman erred in law and facts to anticipate the evidence and failed to evaluate the evidence.*

When the appeal was called for hearing on 21st February, 2023 before me, the appellant urged this Court to argue the appeal by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly confirmed by the appellant.

The appellant began narrating the genesis of the appeal which I am not going to reproduce in this appeal.

Arguing on the first and second grounds, the appellant contended that it is evident from the proceedings of the trial tribunal during the trial did not ascertain the true value of the suit land to know whether or not it had jurisdiction to determine the matter. He submitted that the tribunal in determining any matter needs to determine first the issue of jurisdiction. The appellant went on to state that section 15 of the Land Disputes Courts Act, Cap. 216 establishes pecuniary jurisdiction of the Ward Tribunal. He stated that it is wrong to institute a matter in court which has no jurisdiction. To fortify his submission he cited the case of **Denja John Botto & Others v Umoja wa Wafanyabiashara Ndogondogo Maili Moja**, Civil Appeal No. 157 of 2018 (unreported).

The appellant valiantly argued that the trial tribunal considered the original purchasing price to the tune of Tshs.1, 500,000/= measuring 40 m x 40 m and the appellant bought the said suit land in 1999. He argued that land is one of the assets which appreciate its value within a short time, therefore the trial tribunal was required to ascertain the current value of the suit land to find out if the tribunal had jurisdiction to determine the case.

Submitting on the third ground, the appellant was brief and focused. He contended that the trial tribunal failed to evaluate the appellant's evidence on record properly. He went on to argue that the appellant's evidence proved that he is the owner of the suit land but his evidence was not considered by the trial tribunal. He further argued that the tribunal did not admit a copy of the Sale Agreement which was tendered by the appellant was not taken into consideration by the Chairman while the appellant proved how he occupied the suit land and stated that he stayed in the suit land from the time when he bought it. He added that the respondent did not produce any evidence to prove his ownership.

In conclusion, the appellant urged this court to allow the appeal with costs and quash the decisions of both tribunals.

In his reply, arguing for grounds one and two, the respondent defended the decision of the District Land and Housing Tribunal as sound and reasoned. He submitted that the Chairman was right in upholding the decision of the trial tribunal since it was proper and the pecuniary value did not exceed the threshold of Tshs. 3,000,000/= as stipulated under section 15 of the Land Disputes Courts Act, Cap. 216 [R.E 2019]. He accepted that the true value of suit land was unknown but the same did not deter the trial tribunal and

the DLHT from entertaining the case as the parties submitted themselves to proceed with hearing the case. He continued to submit that a similar situation of an unknown amount of value of pecuniary jurisdiction, was determined by the Court in the case of **Abdi M. Kipoto v Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017. The appellant went on to submit that the prove whether the trial tribunal had no jurisdiction is upon the appellant. Supporting his submission he referred this Court to section 112 of the Evidence Act, Cap. 6 [R.E 2019].

Regarding the issue of the valuation report, the respondent contended that this is a new ground that was not raised at the DLH and the appellant did not produce any valuation report. He further submitted that the appellant was required to show why the substantive value indicated in the pleadings should not be applicable. To buttress his contention, he cited the case of **Tanzania China Friendship Textile Ltd v Our Lady of Usambaraa Sisters** [2006] TLR 70.

Submitting on the third ground, the respondent contended that the appellant failed miserably to prove ownership of the piece of land on which he trespassed. He added that during the visit of the locus in quo established that the appellant exceeded the boundaries limits.

In conclusion, the respondent urged this Court to dismiss the appeal.

In his brief rejoinder, the appellant reiterated his submission in chief. He stressed that the issue of jurisdiction needs to be determined before the hearing of the case he refuted that parties at the trial tribunal submitted themselves to the Ward Tribunal, he stated that the trial tribunal automatically has the power to determine the case and consider the issue of jurisdiction from the first place. He claimed that a point of law can be raised at any time.

I have subjected the submissions by parties to the serious scrutiny they deserve. Having so done, I think, the bone of contention between them hinges on the question *whether the appellant had good reasons to warrant this court to allow his appeal.*

In my determination, I will combine the 1st and 2nd grounds because they are intertwined. The parties have knocked horns on the issue of pecuniary jurisdiction. I have perused the records and noted that the appellate tribunal in its decision found that the issue of jurisdiction was not an issue that could vitiate the Ward Tribunal Judgment and proceedings. It is statutorily spelled out that, the Ward Tribunal when hearing and determining a land dispute its

pecuniary jurisdiction should not be more than three million. Section 13 of the Land Disputes Act, Cap 216, [R.E 2019] provides that:-

"Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall in all proceedings of a civil nature relating to land be limited to the disputed land or property valued at three million shillings."

In my understanding, the above-quoted statutory provision entails that the pecuniary jurisdiction of the Ward Tribunal to entertain land disputes is limited to the value of the land which does not exceed three million shillings. Examining the Saranga Ward Tribunal's proceedings, I have found that, the respondent is the one who filed a suit and in his Application, he did not state the value of the suit land, however, the documents reveal that the respondent bought the suit land to the tune of Tshs. 1,050,000/= the amount does not exceed the statutory pecuniary value of a piece of land. Therefore, since the respondent's sale agreement shows that he paid Tshs.1,050,000/= the same means the value of the suit land was within the jurisdiction of the Ward Tribunal. The appellant had an opportunity to raise his objection at the trial tribunal but he did not do so which means he did not object to the value of the suit land hence he cannot raise his claims

before this Court. Consequently, there was no need for the Ward Tribunal to ascertain the value of the suit land because the documents show clearly that the value was within the jurisdiction of the Ward Tribunal. Therefore, the raised ground does not move this Court to overrule the decision of the District Land and Housing Tribunal.

For the sake of clarity, the cited cases of **Desai** (supra) and **Denja John** (supra) are distinguishable from the matter at hand, since in the case at hand the value of the suit land was stipulated in the sale agreement. Therefore, I fully subscribe to the holding of the DLHT that the appellant who has raised his objection was required to prove the value of the suit land and in doing so the appellant has failed to prove the value of the suit land. See the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113 it was held that:-

"He who alleged must prove the allegations".

Applying the above authority, it means that the appellant has failed to prove his allegation. Therefore, I find these two grounds demerit.

On the third ground, the appellant claims that the appellate tribunal failed to evaluate the evidence on record. The record reveals that the appellate

tribunal evaluated the evidence on record and noted that the respondent tendered a sale agreement to prove his ownership and the appellant tried to tender a copy of the Sale Agreement the same was not admitted for being a copy. Therefore his allegation that he owned the suit land since 24th June 1999 cannot hold water because the same is not proved by any reliable documentary evidence.

Apparently, there is no dispute that the Sale Agreement referred by the appellant to as an important exhibit in the trial court's judgment was not admitted as such. It baffles my mind that the appellant admits that his sale agreement was not admitted. Therefore he cannot blame the tribunal for not relying on the said document which was not admitted by the trial tribunal.

That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with the findings of the District Land and Housing Tribunal for Kinondoni. Therefore, I proceed to dismiss the appeal without costs.

Dated at Dar es Salaam this date 31st March 2023.




A.Z.MGEYEKWA

JUDGE

31.03.2023

Judgment delivered on 31st March 2023 in the presence of the appellant and respondent.




A.Z.MGEYEKWA

JUDGE

31.03.2023

Right of Appeal fully explained.