

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

**MISC.LAND APPEAL NO.47 OF 2022**

(Originating from the Judgment of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No.60 of 2021 delivered on 17<sup>th</sup> May 2022 – Hon. Rugarabamu, Chairman)

**MARY ISHENGOMA.....1<sup>ST</sup> APPELLANT**

**MARY JOHN.....2<sup>ND</sup> APPELLANT**

**JACKLINE DOMINIC.....3<sup>RD</sup> APPELLANT**

***VERSUS***

**FRANSISCO RWEZAURA.....RESPONDENT**

**JUDGMENT**

*06/02/2023 & 24/02/2023*

**L.HEMED, J.**

The appellants, Mary Ishengoma, Mary John and Jackline Rwezaura on one hand signed lease agreement with the respondent, Fransisco Rwezaura on behalf of Gabriel John and Beatrice Byalugaba the owners of Plot No. 142 Block G Boko Dovya. The matter commenced at the ward tribunal for Bunju in "**SHAURI LA ARDHI NA."** 133 OF 2020.

Before the ward tribunal, the respondent herein successful sued the appellants herein for payment of rent arrears which the appellants

had refused to pay to the respondent on the ground that the premises they were occupying did not belong to the respondent. The ward tribunal ordered the appellants to pay to the respondent the rent arrears.

The appellants were dissatisfied with the decision of the ward tribunal for Bunju they appealed to the District Land and Housing Tribunal for Kinondoni (DLHT). The DLHT found the appeal before it to have no merits, it dismissed it and proceeded to direct the parties to pay their arrears of rent and interest at 12%. Maimed by the decision of the DLHT, the appellant opted for the 2<sup>nd</sup> appeal on the following grounds:-

*"1. That the Trial Tribunal having noted that the Respondent had the power of attorney erred in law and in fact in entertaining the finding of the Trial Ward Tribunal who allowed the Respondent to testify on behalf of Gabriel John and Beatrice Byarugaba.*

*2. That the Trial Court erred in law and in fact by awarding to the Respondent relief(s) which*

*was not prayed for at the appellate stage without availing the Appellants right to be heard.*

*3. That the Trial Tribunal erred in law and in facts by compelling the Appellants to pay rent to the Respondent without scintilla of evidence of ownership as the Appellants were doing their business on the road reserves.*

*4. The Trial Tribunal erred in law and in fact by compelling the Appellants to pay rental fees for two years and interest at 12% without any evidence of ownership of the suit premises by the Respondent.*

*5. That the Trial Tribunal erred in law and in fact by failure to make findings that the suit premises under which the Appellant are doing business is the road reserve area."*

The appellants had no legal representation. They were at all the time appearing in person while **Mr. Mahfudhu A.Mbagwa** learned advocate represented the respondent. When the matter came for hearing on 28<sup>th</sup> November 2022, the Court was of the wisdom that the appeal be argued by way of written submissions because the appellants had no legal representation. The schedule to file written Submissions was as follows; Submissions in chief was to be filed by 12<sup>th</sup> December, 2022; Reply submissions by 27<sup>th</sup> December 2022, and the Rejoinder submissions if any was to be filed by 2<sup>nd</sup> January 2023. When the matter came for mention on 6<sup>th</sup> February 2023 for purposes of fixing Judgment date, it was found that only submissions in chief and reply submissions which were in the Case file. This Court proceeded to fix the Judgment date because the appellants were absent without notice.

With regard to ground No.1 of appeal it was submitted by the appellants that, land case number 33 of 2020 was instituted by the Respondent for and on behalf of Gabriel John and Beatrice Byalugaba. In support of the said representation, the Respondent had the special Power of Attorney dated 20/01/2019. It was the assertion of the

appellants that the said power of attorney is not registered. The  
- appellants cited section 96 of the Land Registration Act [Cap 334 RE  
2019] and the case of **Rashid Salimu (on behalf of Dr. Pili) vs  
Sabina Sumari**, Misc Land Appeal No.51 of 2019, to cement their  
point.

In reply thereof, the respondent contended that what the  
appellants have submitted in respect of the 1<sup>st</sup> ground of appeal are  
absolutely different from the ground of appeal upon which the  
submissions support. It was the respondent's contention that it is  
cardinal principle of law that the submissions either made orally or  
written should support the ground of appeal. The appellant can add a  
new ground of appeal by seeking the permission of the Court before  
hearing. The respondent prayed to this Court that the submissions in  
respect of the first ground of appeal should be expunged or  
disregarded since it is against the principles that govern the appeal in  
courts.

I have gone through the 1<sup>st</sup> ground of appeal to check whether  
what the appellants have submitted is concomitant with what is in the  
memorandum of appeal. The 1<sup>st</sup> ground of appeal read in verbatim:-

- *" That the trial Tribunal having noted that the respondent had the Power of Attorney erred in law and in fact in entertaining the findings of the trial Ward Tribunal who allowed the respondent to testify on behalf of Gabriel John and Beatrice Byalugaba contrary to the law"(sic)*

The above quoted ground of appeal suggests that, it was not proper for the respondent to testify under the power of attorney on behalf of donors of the power of attorney. In other words, the ground of appeal implies that a person holding a power of attorney cannot testify on behalf of the donor. However, going through the appellants' submissions, something quite different has been stated. The appellants have stated about the effect of none registration of the power of attorney. It is a trite law that parties are bound by their pleadings. In **Barclays Bank (T) vs Jacob Muro**, Civil Appeal No. 357 of 2018 the Court of Appeal of Tanzania insisted the view that parties are bound by their own pleadings by citing with approval a passage in an article by Sir Jack I.H. Jacob bearing the title, "**The Present Importance of**

**Pleadings"**, first published in Current Legal Problems (1960) at p. 174

- whereby the author among other things said:

*"As the parties are adversaries, it is left to each one of them to formulate his case in his own way subject to the basic rules of pleadings... for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he as to meet and cannot be taken by surprise at the trial. The court itself is as well bound by the pleadings of the parties as they are themselves. It is not part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings..."*

Likewise, in appeals like the one at hand, parties are bound by their pleadings. The appellant is bound by his Memorandum or Petition of appeal. In his submissions, he is not expected to submit or

- introduce something thing different from the grounds of appeal.
- Having found that the appellants have submitted something that is quite different from the 1<sup>st</sup> ground of appeal, the same is ignored and expunged. Nevertheless, I wish to state that, the person who is acting on behalf of someone (the Donor) under power of attorney, has all the powers and authorities of such donor to the extent of the powers/authorities conferred to him.

In the present case, the respondent was authorized by the donors to look after Plot No.142 Block G Boko Dovyva and Plot No 142, C.T NO.80777 and generally, to do all related things necessary and proper in the ordinary conduct for the business for and on behalf of the donors. Therefore, the respondent was right to testify under the power of attorney on behalf of his donors. The 1<sup>st</sup> ground of appeal is thus devoid of merits.

The appellants argued the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal jointly. They stated that the Court is barred from awarding the decree holder the reliefs not prayed for. It was stated that in the matter at hand, the respondent's claims lodged in the ward tribunal read thus: "Maombi ya Mdai kunirudishia eneo langu kwasababu sijalipwa na Tanroads".



The appellants asserted that in the judgment of the Ward Tribunal, the respondent is awarded unpaid rental arrears and on appeal the rental arrears attract interests of 12%. In the view of the appellants, these were reliefs awarded to the respondent without being prayed for as parties are bound by their pleadings. They cited the case of **Mexon's Investment Limited vs DTRC Trading Company Limited**, Civil Appeal No.91 of 2019 where the Court of Appeal of Tanzania held that-

*" The court cannot make a new case altogether and grant relief neither prayed for in the Plaint nor flows naturally from the grounds of claim stated in the plaint."*

In reply thereto, the respondent's counsel submitted that the appellants admitted to have entered into lease agreement with the respondent but later on they stopped paying rent for two years claiming that the plot did not belong to the respondent. He was of the view that both the trial and appellate tribunal acted rightly in awarding the respondent the said reliefs.

Having gone through the parties' submissions let me state at the outset that the Ward Tribunal is not bound by any rules of evidence or procedure applicable to any court. This is pursuant to section 15(1)(2) &(3) of the Ward Tribunals Act, Cap 206 which provides thus:-

*"15 (1) The Tribunal shall not be bound by any rules of evidence or procedure applicable to any court.*

*(2) A Tribunal shall, subject to the provisions of this Act, regulate its own procedure.*

*(3) In the exercise of its functions under this Act a Tribunal shall have power to hear statements of witnesses produced by the parties to a complaint, and to examine any relevant document produced by any party."*

The provision above, shows that rules of pleadings are not applicable in ward tribunals. Therefore, the principle laid down by CAT in **Mexon's Investment Limited vs DTRC Trading Company Limit (*supra*)** on pleadings is inapplicable in ward tribunals.

According to section 11(1) of the Ward Tribunals Act, Cap 206,  
- proceedings in ward tribunals may be instituted by making of a complaint to the secretary of a Tribunal, the secretary of appropriate authority, the chairman of a village council or a ten-cell leader. Subsection (3) to section 11 of the Act, permits a complaint to be made orally or in writing. If the complaint is made orally, the person receiving it has to reduce in writing. It provides thus:-

*"11(3) A complaint may be made orally or in writing, but if made orally shall be reduced in writing by the person to whom it is made and, in either case, shall be signed by the complainant and the person to whom it is made."*

I managed to peruse the records of the trial tribunal (the ward tribunal for Bunju) and found that the respondent complained against the appellants herein for their refusal to pay rent. The complaint readth as follows:-

*" Mimi mtajwa hapo juu nawalalamikia wapangaji wangu kwa kukaa kwenye eneo*

*langu na kudai kwamba hawatanilipa kodi wala  
- hawataondoka Madai yao ni kwamba Eneo hilo  
ni barabarabna wala siyo kiwanja changau”*

I have also noted from the proceedings of the trial tribunal that the appellants admitted in their testimonies that they had entered into lease agreement with the respondent. The trial ward tribunal after having found that the appellants were in rent arrears it ordered for payment of the same. It is my firm view that the trial tribunal was justified to order payment of arrears of rent because even the complaint, which was presented before it, was against the appellants' refusal to pay rent. The trial tribunal having found that the appellants' refusal to pay rent to the respondent was unjustifiable, it had no option other than ordering them to pay the arrears of rent.

The appellants also blamed the Appellate Tribunal (DLHT) for ordering payment of interest at commercial rate of 12%. The question is whether the appellate Tribunal was justified to make such order. Upon perusal of the records of both lower tribunals, I realized that there was ample evidence showing that the appellants had delayed

payment of rent for two (2) years. This being the case the Chairman of the DLHT decided to impose interest of 12% for the delay.

I was prompted to go through the Land Disputes Courts Act, [Cap.216 R.E 216 RE 2019] and encountered with section 35 (1) which provides thus:

*" 35.-(1) A District Land and Housing Tribunal hearing an appeal may-*

- (a) confirm the decision;*
- (b) reverse, or **vary in any manner** the decision;*
- (c) quash any proceedings; or*
- (d) order the matter to be dealt with again by the Ward Tribunal, and may, if it deems appropriate, give an order or direction as to how any defect in the earlier decision may be rectified." (**emphasis added**)*

From the provision cited and quoted hereinabove, the DLHT has the power to vary the decision of the Ward Tribunal. Thus, the chairman of the appellate Tribunal was justified to impose the interest

of 12% after having found that there was a delay in payment of rent arrears.

Submitting on ground Nos.3 and 5, the appellants were of the view that the trial ward tribunal visited the *locus in quo* and survey plan was drawn which indicated that, the appellants were doing business in 21 meters from the main road, on road reserve area. It was stated further by the appellants that they paid rent to the Respondent while they were not aware of their rights of doing business in the road reserve area. It was their view that, the agreement they entered with the respondent cannot be enforced.



In reply thereto, the counsel for the respondent submitted that the disputed land is not a road reserve area. It was argued that the argument would have been proper if the appellants were claiming ownership of the suit land.

In the final analysis, the records of the lower tribunals unequivocally show that, the dispute was on failure of the appellants to pay the respondent the agreed rent. It was not on ownership of the disputed land. The question of ownership could not properly be

determined between the parties whose relationship is of landlord and tenants.



From the foregoing, the entire appeal has no merits. it deserves to be dismissed. Appeal is dismissed with cost.

**DATED at DAR ES SALAAM** this 24<sup>th</sup> February, 2023.

**L. HEMED  
JUDGE**

**COURT:** Judgment delivered in the presence of Ms. Mahfudhu Mbagwa for the respondent and the 1<sup>st</sup> appellant appearing in person this 24<sup>th</sup> February, 2023. Right of appeal explained.

**L. HEMED  
JUDGE**  
24/02/2023