

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL CASE NO. 345 OF 2023

*(Originating from District Land and Housing Tribunal of Kibaha, Land Application
No.78 of 2015 before Hon. S.L. Mbuga, Chairman)*

KIFULETA VILLAGE COUNCIL.....APPELLANT

VERSUS

CHANGALIKWA VILLAGE COUNCIL.....1ST RESPONDENT

VODACOM TANZANIA COMPANY LIMITED.....2ND RESPONDENT

HTT INFRANCO LIMITED.....3RD RESPONDENT

JUDGMENT

19th September, 2023 & 25th October, 2023

L. HEMED, J.

At the District Land and Housing Tribunal for Kibaha, (the DLHT), the dispute was centered on ownership of a piece of land located at Changalikwa, Mbwewe Bagamoyo District. The 1st Respondent **CHANGALIKWA VILLAGE COUNCIL** had sued **KIFULETA VILLAGE COUNCIL**, the appellant herein together with **VODACOM TANZANIA COMPANY LIMITED** and **HTT INFRANCO LIMITED** the 2nd and 3rd respondents respectively, claiming ownership of the suit piece of land. The claims against the 2nd and 3rd respondents were that their

Telecommunication Tower was built in the 1st respondent's land that they are entitled to rent thereof.

Having deliberated over the matter, the trial tribunal found in favour of the 1st Respondent. The DHLT decreed that the suit piece of land belong to the 1st Respondent and was entitled to be paid rent from the 2nd and 3rd Respondents herein. The appellant was aggrieved by the said decision hence this appeal on the following grounds: -

"1. That the learned Chairman erred in Law and facts though entertaining the matter which the trial tribunal has no Jurisdiction.

2. That the learned Chairperson erred in law and facts for failure to evaluate evidence tendered by both parties.

3. That the learned Chairperson erred in law and facts through giving the victory to the respondent while the case was not proved beyond the balance of probabilities.

4. That the learned Chairman erred in law and facts through determination the matter without accessors opinions. (sic)

5. That the learned Chairman erred in law and facts through delivering a judgment seven months after the conclusion of proceedings.”

When the matter was called on 19th September, 2023 for necessary orders, the Appellant was represented by Mr. **Aggrey Mhina**, learned advocate, while Mr. **Leonard Masatu**, advocate represented the 3rd respondent also held brief of Mr. **Hilal Hassan** for the 2nd Respondent. On the said date, the Court directed the appeal to be argued by way of written submissions which in fact were promptly filed as ordered. The 1st respondent could not file submissions despite being duly served. The 3rd respondent also did not file submissions. When the matter was called on 25th October 2023, Mr. Steven Mhando holding brief of Mr. Leonard Masatu informed the court that the 3rd respondent, supports the appeal

I have opted to begin with the 1st ground of appeal on the jurisdiction of the Trial Tribunal to entertain the matter. It was asserted by the counsel for the appellant that the trial tribunal had no jurisdiction over the matter because there was non-joinder of the necessary party, the District Executive Director for Chalinze District and the Attorney General. The necessity of the said parties is the fact that the dispute involved two villages. The appellant's

advocate based his argument on section 26(3) of the Local Government (District Authorities) Act, Cap 287 and section 6 (4) of the Government Proceedings Act [Cap. 5 R.E 2019].

In reply thereof, it was contended by the counsel for the respondent that the question of jurisdiction remains a creature of the statute whereas in the case at hand the Land Disputes Court's Act, under sections 3 & 33 (1) (b), give the DLHT jurisdiction to adjudicate Land disputes arising from village lands. He was of the opinion that since the disputed land is part of village land, then the DLHT had the requisite jurisdiction. With regard to non-joinder of a party to a case varies from case to case it was contended that, it to case depending on the significance of a party in a particular case and how the joinder of such person can help the court make a fair and just decision.

Let me start with the question whether the District Council for Chalinze was a necessary party to the Proceedings before the trial Tribunal. To answer the aforesaid question, it is necessary to know who is a necessary party. The Civil Procedure Code, [Cap. 33 R.E. 2019] is silent in providing the definition of a necessary party. I wish to borrow the definition laid down in an Indian case of **Baranes Bank Ltd v Bhagwandas**, A.I.R (1947) All 18, where the court observed thus: -

*"...The full bench of the High Court of Allahabad laid down two tests for determining the questions whether a particular party is necessary party to the proceedings, **First**, there has to be a right of relief against such a party in respect of the matters involved in the suit and; **Second**, the court to pass an effective decree in the absence of such a party."*

I have opted to look at the above cited definition because, the Supreme Court of India, was trying to define the word necessary party in the context of Indian Code of Civil Procedure 1908 which is in *parimateria* with our legislation governing civil proceedings, that is the Civil Procedure Code, [Cap 33 R.E. 2019].

In our jurisdiction the Court of Appeal of Tanzania got an opportunity to give its definition of "a necessary party" in **Abdullatif Mohamed Hamis v. Melboob Yusuf Osman & Another**, CAT – Civil Revision No. 6 of 2017 where it observed thus: -

"...a necessary party is one whose presence is indispensable to the constitution of a suit and in whose

absence no effective decree or order can be passed. Thus, the determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particular of the nonjoinder party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."

Was the Chalinze District Council necessary to the proceedings in the DLHT? As aforesaid, the dispute before the trial tribunal was on ownership of a piece of land between two registered Villages, the Appellant and the 1st Respondent. One village council instituted the suit against another village council. Section 26 (3) of the Local Government (District Authorities) Act, [Cap. 287 R.E. 2002] provides as follows: -

"...Notwithstanding subsection (2), the District Executive Director shall have the right to be joined as a party in any suit or matter instituted by or against the village council, and for that purpose the village council shall have a duty to notify the District Executive Director

of any impending suit or intention to institute a suit or matter against the village council."

I am aware that village councils are under the District Council and therefore whenever dispute arises, it is necessary to involve the District Council. In the present matter, the two villages, that is the appellant and the 1st respondent never involved the District Council for Chalinze, who in my opinion was a necessary party in view of section 26 (3) of the Local Government (District Authorities) Act, [Cap 287 R:E 2002]. In Law failure to join a necessary party vitiates the proceedings.

Additionally, I have thoroughly read the provision of section 7(1)(c) and 7(2)(a) & (b) of the Village Land Act [Cap 114 RE 2019] and found that the matter at hand been concerned with ownership of village land between two villages/village councils, is one of the disputes that falls within the powers of the Minister responsible for land matters. I find apt to reproduce the provision of section 7(2) of the Act verbatim before I comment. The said provisions, reads as follows:

"...where a village claiming or occupying and using land as village land unable to agree with or is in dispute with a person or body referred to in paragraph (c) of sub-section (1) as to the

boundaries of the land which it is claiming or occupying and using as village land, or wishes to determine the boundaries of the land it is occupying and using in accordance with paragraph (d) of subsection (1), the Minister shall, on being satisfied that every effort has been made to try and reach an agreement on the boundaries either:-

- a. **A point a person to act as a mediator between the village and the person or body with which the village** is unable to reach agreement, the function of that person shall be to work with and persuade the village authorities and that person or body to reach a compromise over the boundaries; or*
- b. Where the mediator reports to the Minister that despite his best endeavors, he is unable to persuade the parties to the dispute to reach a compromise on the boundaries, advise the **Minister to appoint an inquiry under section 18 of the Land Act adjudicate on and demarcate the boundaries of that village Land.**" [Emphasis added]*

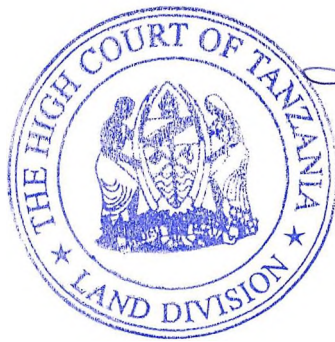
I am of the firm view that the dispute at hand falls squarely to the mode of resolution provided under section 7(2) of the village Land Act, (supra). I am holding so because the dispute between the Appellant and the 1st respondent herein, which are both, village councils, is over ownership of the land which borders between the two villages. Each village council believing that its boundaries ends after moving the place which the Telecommunication tower has been erected. It is my firm view that the dispute ought to have been reported to the Minister responsible for land matters so that the matter would have been resolved pursuant to the provision of section 7(2) of the village Land Act (supra).

From the foregoing, it is now clear that, disputes of ownership of village land or boundaries that involve villages do not fall squarely in the jurisdiction of courts or Tribunals rather within the powers of the Minister responsible for land matters as provided under section 7(2) of the Village Land Act (supra) and section 18 of the Land Act [Cap 113 RE 2019]. Being the case, I find that the trial tribunal acted on the matter without the requisite jurisdiction. The first ground of appeal is thus meritorious.

Having found merits in ground number 1 on the jurisdiction of the trial tribunal over the matter, I find unnecessary to determine the remaining

grounds of appeal for ground one, suffices to dispose of the entire appeal. In the upshot, I allow the appeal with no orders as to costs. The entire proceedings and decision/judgment of the trial Tribunal are hereby quashed. It is so ordered.

DATED at DAR ES SALAAM this 25th October, 2023.




L. HEMED
JUDGE