

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

LAND APPEAL CASE NO. 380 OF 2023

EVANCE AGOSTI MPUTA.....APPELLANT

VERSUS

EMMY MDEGELA..... RESPONDENT

JUDGMENT

27th March 2024 & 16th May 2024

GWAE, J.

The decision of the District Land and Housing Tribunal for Kibaha at Kibaha (DLHT) delivered on the 9th day of August 2023 aggrieved the appellant, Evance Agostin Mputa. He is thus before the Court challenging the order of the DLHT dismissing his application for revision on the following grounds;

1. That, the Chairperson of DLHT erred in law and fact when ignored and totally failed to know that, the Ward Tribunal has no longer enjoying adjudication function by virtue of the Written Laws (Miscellaneous Amendments) (No. 3) of 2021 which came into Force on 11th October 2021(Act No. 3 of 2021)

2. That, the Chairperson of DLHT erred in law and fact when ruled out that the decision of the decision of the Ward Tribunal in Land Complaint No. 40 of 2022 was and is appealable to it and thereby struck out Revision No. 132 of 2022 with costs

Brief facts giving rise to the parties' dispute can be summarized as follows;- That, before Janga Ward Tribunal-Mlandizi within Kibaha District in Coast Region, the appellant lodged a land dispute against the respondent. The ward tribunal conducted full trial, which commenced on 28th March 2022 and the same was conclusively determined on 6th June 2022. In its verdict, the ward tribunal declared the suit house No. KDS/ MLZ/REST/1875/JANGA to be the lawful property of the family of the late Mzee Longolongo. The Ward Tribunal further notified the parties of the right of appeal for an aggrieved party. Subsequently, to the delivery of the ward tribunal's decision, on 13th July 2022, the appellant filed an application for revision of the impugned decision in the DLHT.

The DLHT afforded the parties an opportunity of being heard pursuant to Article 13 (6) (a) of our Constitution, 1977 as amended from time to time. However, the learned Chairperson through the ruling dated 9th August 2023, did strike out with costs the appellant's application for revision on the basis

that if the appellant was not satisfied with the ward tribunal's decision. he would appeal. Hence, the present appeal.

Before this Court, Mr. Raphael David, he learned advocate represented the appellant whereas the respondent appeared in person, unrepresented. The parties sought and obtained leave to argue the appeal by way of written submission.

Supporting the appeal, the appellant's counsel argued that, the Ward Tribunal had jurisdiction to hear the dispute since under section 13 of the LAND Disputes Act, Cap 216, R.E, 2016 (The Act) as amended by Act No. 3 of 2019, sub-section 2 of section 13 of the Act has been deleted. He added that the ward tribunals, after he said amended, which came into force on 11th October 2021, are vested powers to mediate land dispute under section 4 of the Act. It was his considered opinion, that the DLHT's chairperson was entitled to entertain the matter and set aside the decision of an organ not known by the law for adjudicative function. He then embraced his argument by the case of **Desai vs. Warsawa** (1967) EA 351 and **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ngunda and 20 others and Ramadhani Omary Mtiula vs. Republic**, Criminal Appeal No. 62 of 2019 (unreported).

- He finally prayed for an order allowing the appeal and setting aside the decisions of two lower tribunals.

In his response, the conceded to the appellant's prayers and added that the matter be remitted to the Janga Ward Tribunal as required by the law.

As the central issue is on jurisdiction of the Ward Tribunals to hear and determine land disputes prior and immediately after enactment of Act No. 3 of 2021 via (Act No. 3), 2021. Thus, provisions of section 13 of the Act as well as section 45 of Act No. 3 of 2021 amending section 13 of the Act are reproduced herein under;

"13.-(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunals Act, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.

(2) Without prejudice to the generality of subsection (1), the Tribunal shall have jurisdiction to enquire into and determine disputes arising under the Land Act and the Village Land Act.

(3) The Tribunal shall, in performing its function of mediation, have regard to-

(a) Any customary principles of mediation;

(b) Natural justice in so far as any customary principles of mediation do not apply;

(c) any principles and practices of mediation in which members have received any training.

(4) The Tribunal shall, in all matters attempt to reach a settlement by mediation and may adjourn any proceedings relating to dispute in which it is exercising jurisdiction if it thinks that by so doing

"45 (4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably:

Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal."

Looking at the wordings of the above quoted provisions of the law, it sounds to me clearly that, before an amendment of section 13 of the Act, the Ward Tribunals within our country were conferred with powers to hear

- and determine land matters subject to pecuniary jurisdiction as the case before DLHT. Nevertheless, after amendment of section 13 of the Act through Act No. 3 of 2021, which came into operations on 11th October 2021, it is either the District Land and Housing Tribunals or High Court of Tanzania, which remains with original jurisdiction. Hence, the Ward Tribunals are no longer with such power except power to conduct mediations among the disputants in land disputes prior to their adjudication by DLHT.

Coming back to the impugned decision of Janga Ward Tribunal and the subsequent decision of the DLHT on revision filed by the appellant. Upon my passionate perusal of the records of the ward tribunal, it is plainly noted that, the parties to the Application before the Ward Tribunal and their respective witnesses did appear and their respective pieces of evidence were duly recorded. Therefore, it cannot be legally said that, by doing so, the Ward Tribunal discharged its mandate except that the Ward Tribunal is inevitably found to have surpassed its power.

It is trite law that, jurisdiction to adjudicate a matter is a creature of a statute and not the wishes of the parties to the proceedings neither the desires of the court or quasi-judicial body. This position has been consistently

- emphasized by our courts, for example in **Shyam Thanki & Others vs. New Palace Hotel Ltd** (1972) HCD 90

"All the courts in Tanzania are created by statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot by consent give a court jurisdiction which it does not possess."

See also **Fanuel Mantiri Ng'unda vs. Herman Mantiri Ng'unda & 20 Others, Civil Appeal No. 8 of 1995** (unreported-CAT) and **Pastory Mikebuko vs. Treasury Registrar & Another** (Civil Case 22 of 2020) [2022] TZHC 10695 (8 July 2022).

Since the issue of jurisdiction is so paramount that courts must be certain and assured of their jurisdictional position before commencement of trials and since the Ward Tribunal acted without being clothed with the same, its proceedings, decision thereof and any other order are nothing but a nullity. Equally, the DLHT's Chairperson ought to have properly exercised its revisionary power to revise, quash and set aside proceedings and decision of the Ward Tribunal.

In the upshot, this appeal is allowed. The decisions of the tribunals below are consequently quashed and set aside. Any party may institute a land case before a court or tribunal of competent jurisdiction. Given the circumstances of the dispute between the parties, I refrain from making an order as to costs.

It is so ordered.

DATED and delivered at **DAR ES SALAAM** this 16th day of May, 2024.




M. R. GWAE
JUDGE