

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

**LAND APPEAL NO. 1524 OF 2024**

(Originating from Application No. 174 of 2021, Ilala District Land and Housing Tribunal)

**NURU IDRISA** (Administratrix of the Estate of the Late Asha Abdallah Kanda).....**APPELLANT**

***VERSUS***

**NIZAR GULAMALI KASSAM**.....**1<sup>ST</sup> RESPONDENT**

**E.F.C. TANZANIA LIMITED**.....**2<sup>ND</sup> RESPONDENT**

**TANZANIA QUALITY MART**.....**3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

9/05/2024 to 20/06/2024

**E.B. LUVANDA, J**

The Appellant named above is aggrieved by the decision of the Tribunal decreeing in favour of the First Respondent as the lawful owner of a house comprising in the residential licence No. ILA001069, area land No. ILA/BUG/MLP14/103, Malapa Street, Buguruni Ward Ilala Municipal (exhibit KM2) having purchased the same on public auction conducted by the Third Respondent above named who was acting under the instructions of the Second Respondent mentioned above.

- It was alleged that sometimes in 2016 Asha Abdallah Kanda (deceased)
- borrowed a sum of Tsh 12,000,000 from the Second Respondent where a suit house was mortgaged as a collateral, as per mortgage deed exhibit KM4. It appears the deceased later failed to service her loan, where she was served with notice requiring her to remedy the default as per exhibit KM5.

After auction, on 25/03/2017 the late Asha Abdallah Kanda instituted Land Case No. 105 of 2017 along Misc. Land Application No. 257 of 2017 Land Division, which abated on 26/11/2018 following her demise on 12/11/2017. Thereafter the Appellant instituted Misc. Land Application No. 578 of 2020 Land Division asking for extension of time to be joined as a legal representative of the deceased who was the Applicant in Misc. Land Application No. 257 of 2017 and as a Plaintiff in Land Case No. 105 of 2017. Misc. Land Application No. 578 of 2020 was dismissed with costs for want of sufficient course for delay, as per ruling exhibit KU3. It appears the Appellant initiated steps to appeal to the apex Court vide Misc. Land Application No. 275 of 2021.

The First Respondent herein who was not impleaded in either Land Case No. 105 of 2017, nor Misc. Land Application No. 257 of 2021 or Misc. Land Application No. 578 of 2020, instituted Application No. 174 of 2017 before the Tribunal which was decided as indicated above, hence this appeal.

- In the memorandum of appeal, the Appellant grounded that: One, the learned
- Chairperson grossly erred in law and fact to entertain the application before it while the High Court case which is challenged the sale of the suit house done by the Second Respondent has not been concluded by the Court of Appeal of Tanzania as provided for by the law; Two, the learned Chairperson grossly erred in law and fact to entertain and determine the Application without having pecuniary jurisdiction contrary to as stipulated in the valuation report of the suit house; Three, the learned Chairperson grossly erred in law and fact by pronouncing the decision she come up with since the records are clear that the process of selling the said suit house was illegally improper; Four, the learned Chairperson grossly erred in law and distorted herself in delivering judgment of Application No. 174 of 2021 while the Application between the parties was No. 174 of 2017.

The Appellant submitted that after being dissatisfied with the ruling exhibit KU3, she filed a notice of appeal and asked for certified copies of ruling and drawn order for purpose of appeal. She cited rule 89(2) of the Tanzania Court of Appeal Rules, 2019. She asked the Court to accept her ground of appeal on this subject. For ground number two, the Appellant submitted that the valuation report which was prepared by the Second Respondent show the market value is 94,000,000 and forced sale value is Tsh 56,000,000. She cited section 33(1)(a), (b), and

(2) of the Land Disputes Courts Act, 2002 (sic, Cap 216 R.E. 2019), for a proposition that the Tribunal acted without having pecuniary jurisdiction.

Ground number three, the Appellant submitted that the suit house was sold at Tsh 25,000,000, arguing is a very low price less than what was given in the valuation report which is Tsh. 94,000,000. She cited the case of **Lengai Lemako Laizer @ Paul Lengai vs CRDB Bank PLC and Two Others**, Land Case No. 58 of 2016 HC Arusha, for the proposition that this Court therein faulted the mortgagee for failure to obtain the best price obtainable at the time of sale of the mortgagor property. She submitted that it is clear that Tsh 25,000,000 was a very low price below market value of Tsh 94,000,000 appearing in the valuation report. She submitted that the Third Respondent auctioned a house without giving fourteen days notice to the mortgagor.

Ground number four, the Appellant submitted that Application No. 174 of 2017 was filed by the First Respondent, arguing they did not have case with No. 174 of 2021. She submitted that even judgement in this appeal will be invalid. Surprisingly the Appellant cited section 95 of the Civil Procedure Code, Cap 33 R.E. 2019 to aid her argument.

Mr. Adili Kiiza learned Counsel for First Respondent submitted that the issue of pendency of appeal to the apex Court is a new fact which was neither raised at the Tribunal nor known by the First Respondent. He submitted that parties are

bound by their own pleadings. He submitted that each party must know the case is facing without being taken by surprise, cited **James Funke Ngwagilo vs Attorney General** [2004] TLR 161.

For ground number two, the learned Counsel submitted that pleading in the trial court (sic, tribunal) indicate that the suit property is worthy twenty-five millions which is within court's (sic, tribunal's) jurisdiction of fifty millions, citing section 33(2)(a) Cap216 (supra).

Ground number three, the learned Counsel submitted that it is on record that the Appellant was served with sixty days notice of default and fourteen days notice before the public auction was conducted, citing exhibit KU5. He submitted that the suit land was legally disposed and eventually the First Respondent acquire the title thereof. He submitted that the First Respondent is a bonafide purchaser, arguing his right cannot be prejudiced, citing **Godebertha Rukanga vs CRDB Bank Limited and Others**, Civil Appeal No. 25 of 2017.

Ground number four, the learned Counsel submitted that it was just a slip of a pen and the Appellant had a chance of applying for amendment according to section 95 Cap 33 (supra). He submitted that the Appellant did not show to what extent a clerical error occurred when typing the judgment prejudiced her rights.

Mr. Cleoplace James learned Counsel for Second and Third Respondent submitted that there is no pending appeal to the Court of Appeal. He submitted that even if there was a notice of appeal, the Appellant was supposed to raise the preliminary objection that the matter is *res-judicata* or to produce evidence during trial, which she waived.

Ground number two, the learned Counsel submitted that the estimated value of the property was Tsh 25,000,000. He submitted that in 2021 as per the valuation report alleged by the Appellant, the suit property was Tsh 94,000,000, arguing is within pecuniary jurisdiction of the Tribunal, citing section 33(2)(a) Cap 216, that the Tribunal has jurisdiction in proceedings for the recovery of possession of immovable property which value does not exceed three hundred million. He submitted that the Tribunal had jurisdiction to entertain the matter.

Ground number three, the learned Counsel submitted that there is no evidence tendered by the Appellant to show that the value of the suit property is Tsh 94,000,000, citing section 110 of the Evidence Act, (sic Cap 6 R.E. 2019); **JM Hauliers Limited vs Access Microfinance bank Ltd**, Land Appeal No. 274 of 2021 (CAT) (sic). He submitted that the Appellant failed to tender the valuation report. He distinguished the case cited by the Appellant, arguing the case before the Tribunal was ownership of the suit property and not the public auction.

- On rejoinder, the Appellant submitted that the issue of pendency appeal to the Court of Appeal was raised before the Tribunal and is known to the First and Second Respondent, arguing they have not been taken by surprise.

For ground number two, the Appellant submitted that the valuation report was tendered and admitted as exhibit KU1, arguing the Tribunal acted without having pecuniary jurisdiction.

I will start with ground number one, the question of notice of appeal against a ruling exhibit KU3 was not pleaded anywhere before the Tribunal. In her written statement of defence, the Appellant had pleaded existence of Misc. Land Application No. 257 of 2021. Even in preliminary objection the Appellant grounded that the suit was *res subjudice* to Land Case No. 257 of 2017. Be as it may, assuming that a notice against a ruling exhibit KU3 was filed and served as alleged. But still will have not impacted the proceedings before the Tribunal. As per the preface above, the ruling exhibit KU3 was for enlargement of time for the Appellant to join as a legal representative of the deceased who was the Applicant in Misc. Land Application No. 257 of 2017 and as a Plaintiff in Land Case No. 105 of 2017, which proceedings abated on 26/11/2018 following her demise on 12/11/2017. No wonder even in her argument the Appellant was unable to link her argument for the alleged pending notice of appeal and the subject matter of this appeal. Therefore, this argument is devoid of merit.

Ground number two, is without substance. In the application filed on 16/07/2017 along amended application filed on 2/06/2020 depict the value of the subject matter is twenty-five million. Arguably in the valuation report dated 28/06/2016 exhibit KU1 suggest market value of the suit property being 94,000,000. However as alluded by the learned Counsel for Second and Third respondent, the same amount of 94,000,000 is within the pecuniary jurisdiction of the Tribunal. This is for reason that section 33(2)(a) Cap 216 (supra) confer jurisdiction to the Tribunal in respect of proceedings for the recovery of possession of immovable property which value does not exceed three hundred million. For brevity, I quote the entire section 33 and bold the appropriate proviso,

*(1) The District Land and Housing Tribunal shall have and exercise original jurisdiction—*

*(a) in all proceedings under the Land Act , the Village Land Act , the Customary Leaseholds (Enfranchisement) Act, the Rent Restriction Act and the Regulation of Land Tenure (Established Villages) Act ; and*

*(b) in all such other proceedings relating to land under any written law in respect of which jurisdiction is conferred on a District Land and Housing Tribunal by any such law.*

*(2) The jurisdiction conferred under subsection (1) shall be limited—*

***(a) in proceedings for the recovery of possession of immovable property, to proceedings in which the value***



***of the property does not exceed three hundred million shillings; and***

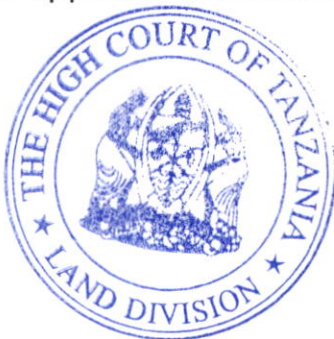
*(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred million shillings'*

Therefore, the argument by the Appellant has no leg upon which can peg on. Ground number three, is unmerited. As alluded by the learned Counsel for the Second and Third Respondent, the case before the Tribunal was ownership of the suit property and not the public auction. Therefore, the argument that the suit house was sold at a very low price less of Tsh 25,000,000 instead of Tsh Tsh. 94,000,000 given in the valuation report, to my view is out of context. Sequel to that, the argument that the Third Respondent did not issue fourteen days notice, is unmerited. As alluded by the learned Counsel for the First Respondent, the record of the Tribunal depict the Appellant was served with sixty days notice of default exhibit KU5 also DW3 who testified for the Appellant asserted seeing notice posted or affixed on the electric pole. Importantly, as per the findings of the Tribunal there was no any counter claim by the Appellant. As such all these arguments are irrelevant.

For ground number four, I am wholly in agreement with the argument of the learned Counsel for the First Respondent that the impugned judgment which reflect Application No. 174 of 2021 instead of 174 of 2017, was just a slip of a

- pen. It was the duty of the Appellant to rectify the anomaly by way asking the
- Tribunal to rectify the mistake under the provision of section 95 Cap 33 (supra).  
It is awkward for the Appellant to bring such an argument which invariably defeat her course and or painting her as shoddily presenting her appeal incompetently. As alluded by the learned counsel for First Respondent the Appellant did not show to what extent a clerical error occurred complained off, which occurred when typing the judgment prejudiced her rights.

The appeal is dismissed with costs.



E.B. LUVANDA  
**JUDGE**  
20/06/2024

Judgment delivered in the presence of the Appellant, Mr. Adili Kiiza learned Advocate for the First Respondent and Mr. Cleoplace James learned Counsel for the Second and Third Respondent.



E.B. LUVANDA  
**JUDGE**  
20/06/2024