

**IN THE HIGH COURT OF TANZANIA
AT MWANZA
MISC. LAND CASE APPEAL NO. 70 OF 2018**

(Arising from Decision of the District Land and Housing Tribunal of Geita at Geita in
Appeal No. 90 of 2012 dated 20th December, 2012 and originating from Katoro Ward
Tribunal in Land Case No. 106 of 2012)

YANGA MHOGEJA.....APPLICANT

VERSUS

BUZURIZURI GASSONI1ST RESPONDENT

MLASA SONDA.....2ND RESPONDENT

PASCAL KATOROROKU.....3RD RESPONDENT

MABUGA MAHENDE.....4TH RESPONDENT

JUDGMENT

10.12.2019 & 27.2.2020

U. E. Madeha, J

Yanga Mhogeje filed a land case at Katoro Geita Ward Tribunal against four respondents who took his 200 hectors of farm without any communication. Yanga Mhogeje explained that, the farm belonged to his brother who died in 1983. The judgment of the Ward Tribunal was that Yanga Mhogeje does not have a letter of administration of estate, he left the field from 1983 to 2012 which is over 29 years and which is beyond 12 years limitation period.

The village government distributed the farm in 1970 by a village operation. The Ward Tribunal allowed the respondents to continue to own their land in accordance with the law of 1970s. Geita District Land and Housing Tribunal held that the value of the disputed land exceeds the pecuniary jurisdiction of the ward Tribunal, Yanga Mhogeje abandoned the suit land for a long time from 1983, and the respondents have been occupying the land in dispute for more than twenty years and thus upheld the decision of the Katoro Ward Tribunal. The grounds of appeal raise the issue whether the Ward Tribunal had pecuniary jurisdiction to hear this case.

Starting with the submissions of Mr. Chiyengere Wandole, the learned advocate for the respondent, it was his submission that once there is a dispute concerning estimated value of the disputed land, the value of the land must be ascertained by the valuer taking into consideration the current market value of the land and its improvement at the time the suit was instituted. He cited the case of Karal Aziz Msuya Land Case No. 42 of 2017 High Court of Tanzania, Dar es Salam Registry and the case of **Fanuel Mantiri Ng'unda Versus Herman Mantiri Ng'unda** (1995) TLR 159.

It was elaborated that it is a risk for the Court to proceed with the trial of the case while assuming jurisdiction and while there is a dispute which exceeds the pecuniary jurisdiction of the Ward Tribunal. The respondents have been occupying and using the land from 1983. The proof of ownership cannot be limited to documents alone but it also extends to testimonies by witnesses who can sufficiently prove the case. It was argued that it was thus the appellant who failed to prove his case.

Coming to the arguments of Mr. Erick Katemi, the learned advocate for the appellant submitted that, the suit land was owned by Lufungilo Mhogeja who died in 2003. He left properties including 200 acres of land located at Katoro Geita. The appellant was appointed to be administrator of the estate in 2013. The Ward Tribunal has no jurisdiction to entertain the matter. The proceedings, decisions and the orders of the Ward Tribunal and the District Land and Housing Tribunal were a nullity. They must all be quashed and set aside.

On my part, I am of the opinion that the Ward Tribunal had no jurisdiction to hear and determine this case. The claims filed by the appellant involved 200 or 108 acres of land which necessarily show that this case should not have been referred to Ward Tribunal but to the court

which has jurisdiction to hear the dispute. Given the size of the disputed land, its value cannot be said to be within the jurisdiction of the ward tribunal.

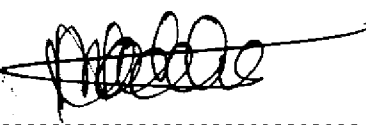
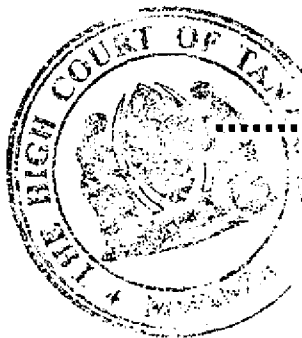
I agree with the appellant's learned advocate that the court did not have jurisdiction to hear this case. I am in agreement with the appellant that the Ward Tribunal had no jurisdiction of entertaining the matter as it exceeded the pecuniary jurisdiction conferred to it under section 15 of the Land Disputes Courts Act, 2002 which states, I quote:

"Notwithstanding the provisions of section 10 of the Ward Tribunals Act, 1985, 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".

It is a considered opinion of this court that the Court that hear and determine the case must have a jurisdictional base on which it caters upon. Merits of the case cannot be found where that court has no jurisdiction. The Ward Tribunal had no pecuniary jurisdiction and absence of such not only automatically affects merits but justice as well. The Ward Tribunal's proceedings were therefore null and void. I thus proceed to declare them null and void.

Since the Ward Tribunal's proceedings were a nullity, the appeal before the District Land and Housing Tribunal was equally null and void. I thus proceed to declare the same null and void and accordingly the appeal is partly allowed. Each party to bear its own costs. It is so ordered.

DATED and **DELIVERED** in **MWANZA** on this 27Th day of February 2020.



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U. E. Madeha
Judge
27/2/2020