

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**MISCELLANEOUS LAND CASE APPEAL NO. 25 OF 2020**

(From the District Land and Housing Tribunal of Manyara at Babati in Land Appeal No. 45 of 2018 and original Ward Tribunal of Bargish in Application No. 30 of 2018)

**BAHA MATLE..... APPELLANT**

**VERSUS**

**YASENTA UNGENI.....RESPONDENT**

**JUDGMENT**

18/3/2022 & 09/9/2022

**ROBERT, J:-**

The respondent successfully sued the appellant before the Ward Tribunal for Bargish in Application No. 30 of 2018 alleging trespass to his landed property. The Ward Tribunal declared the respondent herein the rightful owner of the disputed piece of land and ordered the appellant to vacate. Aggrieved, the appellant appealed before the District Land and Housing Tribunal for Manyara which upheld the decision of the trial Tribunal. Still aggrieved, the appellant lodged the second appeal before this Court armed with six grounds appeal which I take the liberty to reproduce as follows:-

- 1. That the Honourable Chairman of the Appellate Tribunal grossly erred in law and facts in maintaining decision of the trial Tribunal while the respondent did not present actual claims of the disputed land.*
- 2. That the Honourable Chairman of the DLHT grossly erred in law and facts in determining suit land in favour of the respondent while she has no locus standi to institute case against appellant.*
- 3. That the Honourable Chairman of the DLHT wholly erred in law and facts in determining suit land in favour of appellant while the case was not proved beyond required standard.*
- 4. That the Honourable Chairman of the DLHT totally erred in law and facts by not taking into accounts that trial tribunal lack pecuniary jurisdiction over suit land as inaugurated under section 15 of the Land Disputes Courts Act (Act No. 2 of 2002).*
- 5. That the Honourable Chairman of the DLHT grossly erred both in law and facts as the same was time barred.*
- 6. That the Honourable Chairman of the DLHT with his two gentlemen assessors grossly erred in law and facts in maintaining the decision of the trial Tribunal while in fact it failed to evaluate properly trial evidence and historical background of the disputed land.*

The appellant's prayer before this court was for this appeal to be allowed, the findings of both lower Tribunals to be quashed and set aside and to be declared as the lawful owner of the disputed land as well as costs to be paid to the appellant.

On the 25<sup>th</sup> day of October, 2021 when this appeal was called on for hearing, parties agreed for the hearing to take place in the form of

written submissions. Consequently, a schedule was made to which parties adhered to by filing their respective submissions.

Submitting in support of the appeal, the appellant submitted with regard to the first and fourth grounds that the respondent did not present actual claims of the disputed land therefore the tribunal lacked jurisdiction. He submitted further that the respondent failed to indicate the size, location, demarcation and estimated value of the disputed land which would have assisted the trial tribunal to know whether it had jurisdiction as required under section 15 of the Land Disputes Courts Act [Cap 216 RE 2019] which is also necessary for purposes of making executable orders. To buttress his argument, he cited the cases of **Rwanganilo Village Council & 21 Others vs Joseph Rwakashenyi**, Land Appeal No. 74 of 2018, and **Registered Trustees of Kanisa la Mungu la Tanzania vs Mussa Akonaay & Others**, Land Case No. 36 of 2017 HC-Arusha. He prayed that this ground be allowed.

With regards to the second ground of appeal which carries the complaint that the respondent herein lacked locus standi to institute the matter, he submitted that the dispute over the piece of land started long ago between the appellant and the respondent's husband, one Mathias Qambadu, who later was involved in an accident and is now disabled. He

argues that in 2018 the respondent herein instituted a matter against the appellant without having any instrument allowing her to take the matter on behalf of her husband thus she could not legally represent him. On what it means by locus standi, he referred this court to the case of **Lujuna Shubi Ballonzi Senior vs The Registered Trustees of Chama Cha Mapinduzi**, TLR (1996) 203 and also Halsbury's Laws of England, 4<sup>th</sup> Edition paragraph 49 at page 42.

Coming to the fifth ground of appeal, the appellant submitted that the matter before the Ward Tribunal was time barred as the respondent was supposed to appeal from the decision of the Village Land Council of Bargish since 2005 but he did not. Therefore, by instituting the matter before the Ward Tribunal in 2018, which is 13 years later, the matter was time barred for being filed after the prescribed time of 12 years provided for under section 3 item 22 of the Law of Limitation Act [Cap 89 RE 2019]. It was his further submission that, he has been in occupation of the disputed land for a long time thus he is legally entitled to it. To support his argument, he made reference to the case of **Nassor Uhadi vs Mussa Karunge**, [1982] TLR 302 and **Shabani Nassoro vs Rajabu Simba** [1967] HCD 233 and prayed for this ground to be allowed.

Submitting on the sixth ground of appeal which touches on the failure by the DLHT to evaluate the trial evidence, he argued that the appellant inherited the disputed land from his father, Matle Akonaay, who passed away in 1970. He submitted further that in 1992 he fenced the disputed plot with sisal and it was invaded in 2005 by the respondent's husband who was convicted by Endagikot Primary Court. He stated that he stayed and used the disputed plot until 2018 when the respondent instituted a claim against him in the trial Ward Tribunal which decided against him.

He contended that the DLHT and the trial Ward Tribunal made decisions without assessing the credibility of each witness and without scrutinising the evidence which resulted in making erroneous findings. Cementing on that contention he referred this court to **Stanslaus Rugaba Kasusura & AG vs Phares Kabuye** (1982) TLR 338.

In conclusion he prayed for the appeal to be allowed with costs and the decisions of both lower tribunals to be quashed and he be declared the legal owner of the disputed plot.

In response to the first and fourth grounds, the respondent argued that the said grounds are totally misconceived and baseless as the trial Ward Tribunal visited the locus in quo and verified the disputed land with

its clear location, size and value. She argued that the appellant refused to visit the locus in quo to seek solution but is now delaying the respondent's right. She maintained that it is a principle of law that he who alleges must prove and therefore it is upon the appellant to prove the proper valuation of the disputed plot. She cited the case of **Hotel Travertine Ltd & Two Others vs NBC Ltd** (2006) TLR 133 to support her argument.

As for the authorities cited by the appellant, she submitted that, they are misconceived as in this case the landed property is well described by the respondent.

With regards to the second issue of locus standi, she maintained that this claim is baseless because she was able to establish the way the disputed land was maintained and developed as one of their matrimonial properties with her husband who is now incapacitated by the accident. She submitted therefore that under the Law of Marriage Act she has locus standi to sue by her own name over their matrimonial property.

With respect to the fifth ground of appeal, she submitted that the issue of time limitation was well discussed and settled in the first appeal. She submitted further that the issue was wrongly brought without proper procedure as the same ought to have been raised at the lower tribunals and raising it now is just an afterthought.

Replying to the sixth ground of appeal, the respondent stated that both sides were invited to give evidence and call witnesses but the appellant refused to call witnesses and tendered nothing to prove his case. Hence, the trial Tribunal arrived at a reasonable and justified decision in favour of the respondent. She maintained that, the Trial Tribunal was better placed to evaluate the evidence. To support her argument, she cited the case of **Ally Abdalah Rajabu vs Saada Abdalah Rajabu & Others** (1994) TLR 132.

In conclusion, she prayed that this appeal be dismissed with costs.

In a brief rejoinder, the appellant reiterated his argument that there was no size, value and description of the disputed land and that the DLHT did not consider the errors made by the Ward Tribunal.

With regard to the issue of locus standi, the appellant insisted that the respondent lacked locus standi to represent her husband as the evidence show that the land was bestowed upon her husband by his late father thus it is her husband's land and her submission that it is matrimonial property is not applicable in this case. He maintained that the impugned decisions be quashed and set aside.

I will now make a determination of this matter starting with the first ground of appeal which touches on the issue of jurisdiction. It is

contended by the appellant that the DLHT failed to hold that the Ward Tribunal did not establish whether it had jurisdiction to try the matter as the size, value and description of the disputed land was not established.

Having perused the records of the Ward Tribunal, it is apparent to this Court that there is nothing in the said records which indicates that the Ward Tribunal ascertained if it had jurisdiction to determine the matter before it. In his appeal before the DLHT, the appellant raised the issue of jurisdiction but it was turned down by the Honourable Chairman who decided that the issue of jurisdiction was a new issue that could not be entertained at the appellate level.

With due respect to the Honourable Chairman, it has been decided by this Court and the Court of Appeal times without number that the issue of jurisdiction can be raised at any stage of the proceedings including during an appeal as it touches on the very root of any matter. See **Tanzania-China Friendship Textile Co. Ltd vs Our Lady of the Usambara Sisters** [2006] TLR 70.

Since the trial Ward Tribunal failed to ascertain the value of the suit land in order to find out if the Tribunal was clothed with the jurisdiction to entertain the matter placed before it as required under section 15 of the Land Disputes Courts Act (supra) which limits the jurisdiction of Ward

Tribunals to landed properties with a value not exceeding 3 million shillings, this Court finds that, it cannot be stated with certainty that the said tribunal had jurisdiction to entertain the matter placed before it. Consequently, the proceedings of the Ward Tribunal and the judgment thereof are a nullity. As a result of that, the proceedings and judgment of the District Land and Housing Tribunal having stemmed from a nullity are equally a nullity.

On the foregoing reasons, I allow the appeal and set aside the judgment and decree of the Ward Tribunal and that of the DLHT. Parties are at liberty, if they are so interested, to institute a fresh suit before a Tribunal or a Court with competent jurisdiction having ascertained the value and proper description of the disputed land. Since this ground is sufficient to dispose of this appeal, I find no pressing need to deliberate on the remaining grounds of appeal. I make no order as to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "K.N. Robert".

K.N.ROBERT  
JUDGE  
9/9/2022