THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF MWANZA

AT MWANZA

LAND APPEAL NO. 12 OF 2023

(From the judgement in Land Appeal No. 27 of 2021 of the District Land and Housing Tribunal for Mwanza at Mwanza, originating from Bukandwe Ward Tribunal, Mwanza)

KINOJA MANYILIZU ----------1ST APPELLANT
ELIZABETH MANYILIZU----------2ND APPELLANT
LEMELA MANYILIZU----------3RD APPELLANT

VERSUS

CHARLES K. SHILATU----------RESPONDENT

JUDGEMENT

May 23rd & June 16th, 2023

Morris, J

The three appellants above are dissatisfied with the judgement of the District Land and Housing Tribunal (DLHT) in Land Appeal No. 27 of 2021. They have preferred this second appeal. Five grounds are fronted thereof. They allege that, the trial tribunal had no pecuniary jurisdiction; the matter before the trial tribunal was time barred; the decision of the trial tribunal was solely of the chairman in exclusion of other members; it was not proper

to declare the respondent as lawful owner of the suit land while he was suing as the administrator of the estates; and that both trial and first appellate tribunals disregarded cogent evidence of the appellants.

In brief, the parties' dispute is over a farm situate Njicha Village, Bukandwe Ward of Magu District, Mwanza. Allegedly, the disputed farm was originally owned by one Shilatu, the father of Kalombelo Shilatu who sired the respondent. One Kwikabya was married by the said Shilatu. Shilatu predeceased his wife. The said Kwikabya got into marriage with Shilatu while she already had three children including Manyilizu Mayala who is the appellants' father. The said Kwikabya, however, died in 1963.

Sometimes in 2008 Kalombelo Shilatu passed on. The family members, mutually agreed that the appellants would continue using the suit farm for cultivation. Ten years later (in 2018), the first appellant chased the respondent on claim that the suit farm did not belong to the latter. The respondent, who is also the administrator of the estates of Immakulata Kwikabya Kanang'wa, successfully sued for recovery of suit farms before the ward tribunal. The appellants unsuccessfully appealed to the DLHT, hence, this second appeal.

I ordered the appeal to be disposed by way of written submissions. The filing schedule was complied with accordingly. The appellants were represented by advocate Tupege Anna Mwambosya while advocate Ezekiel James Susuba acted for the respondent. I will consider the submissions of both parties while determining the grounds seriatim below.

However, before I cruise off to determine the grounds of appeal, I hasten to reemphasise that, this being the second appeal, the court will not interfere with the concurrent findings of the two lower tribunals. That is, this Court will only confine itself with matters of law arises therefrom. Two reasons justify my choice hereof. **One**, I am guided by a longstanding position of law that, the second appellate court hardly interferes with concurrent findings of two courts below unless there is a serious occasioning of injustice. [***Hamisa Halfan Dauda v R***, Criminal Appeal No. 231 of 2009; ***Benedict Buyombe @Bene v R***, Criminal Appeal No. 354 of 2016 (both unreported)]. **Two**, out of the five grounds of appeal lodged by the appellants, one relates to evaluation and analysis of evidence.

That said and done, I now turn to the grounds of appeal. The first one is whether the ward tribunal had pecuniary jurisdiction to determine the

matter before it. It was submitted for the appellants that, under section 15 of ***the Land Disputes Courts Act***, Cap 216 R.E. 2019; the trial tribunal had no pecuniary jurisdiction for the suit land comprises 24 acres valued at far beyond Tshs. 3,000,000/-. It was submitted further that the ward tribunal visited the suit farm and measured the land which reflected its size to be an estimate of 24 and half acres.

To the appellant, the trial tribunal was enjoined to determine the value of the suit farm prior to hearing and determining the dispute. Reference was made to the case of ***Industrial Clothing and Supplies Company Limited v Abraham Mwakatitalu and 3 others***, Land Case No. 9 of 2020 (unreported) to reinforce the argument that failure to state the value of land renders the matter incompetent.

In reply, the respondent submitted that the suit property neither comprised 24 acres nor fell beyond pecuniary jurisdiction of the trial tribunal. He thus argued that, no requisite plaint was filed before ward tribunal to warrant stating the pecuniary jurisdiction. To him, the appellants were supposed to raise the objection thereof but instead they raised it as a ground of appeal and abandoned it before the first appellate tribunal.

I have considered the submissions of both parties. Evidently, the trial tribunal's record does not state the value of the suit land. Inarguably, the appellants raised this ground before first appellate tribunal but subsequently abandoned it in the course of pursuit of their appeal. I totally agree with both parties that this point, being of jurisdiction, can be raised at any stage even before this court. However, without unnecessary emphasis, pecuniary jurisdiction requires evidence. In the case of ***Sospeter Kahindi v Mbeshi Mashini***, Civil Appeal No. 56 of 2017 (unreported) the Court of Appeal held the following;

> *"Much as we agree that the issue of jurisdiction can be raised at any time, we think,* ***in view of the orality, simplicity and informality of the procedure obtained at the ward tribunal level, the appellant's concern on jurisdiction ought to have been raised at the earliest opportunity****, most fittingly at start of the proceedings. …no evidence was adduced on the pecuniary appraisal of the suit property apart from the respondent's declaration that his father bought that land in 1972 at the price of TZS. 10,000.00. In fact, not even its dimensions or acreage were stated by any of the parties, implying that the land might not be measuring 96 acres as alleged by the appellant…we are of the view that the jurisdiction*

issue raised could not be determined without evidence of the value of the subject matter. ***We are, as result, inclined to hold that the appellant's request for termination of proceedings came rather belatedly. For it was made on the day the tribunal visited the locus in quo after both sides had closed their respective cases****…"* (emphasis added).

Therefore, guided by the foregoing decision, this Court is of the considered conclusion that the first ground, though hinged on jurisdiction, it requires evidence. It is, therefore, somewhat impracticable at this stage to determine it based on the scanty or no record at all. Nevertheless, the appellants are of the view that the trial tribunal ought to ascertain value of the suit farm before hearing in line with the case of ***Industrial Clothing and Supplies Company Limited v Abraham Mwakatitalu and 3 others*** (*supra*).

However, this argument will not sail through so smoothly. Pursuant to section 45 of ***Cap 216*** (*supra*), decisions or orders of the land tribunals; when tainted with procedural irregularity, error or omission in the proceedings before or during the hearing are condoned. In ***Yakobo***

Magoiga Gichere v Peninah Yusuph, Civil Appeal No. 55 of 2017 (unreported); the justification for flexibility in ward tribunal's procedural compliances was recapitulated. The Court held, *inter alia*, that; courts "should not read additional procedural technicalities into the simple and accessible way ward tribunals in Tanzania conduction their daily business".

I am alive and active to the statutory procedures where a suit commences by presentation of a plaint to the court. This *modus operandi* is subject to compliance with ascertainable rules of pleadings. On such basis, for example, the estimated value of the subject matter must be stated. However, that compulsive requirement is not embedded in the procedures before the ward tribunals. Therefore, I find that the first ground of appeal lacks merit. It is accordingly dismissed.

The second ground of appeal faults the trial tribunal to entertain the matter which allegedly was time barred. The appellants submitted that, according to item 22, part I of the schedule to ***the Law of Limitation Act***, Cap 89 R.E 2019 suit for recovery of land must be filed within 12 years. It was argued further that, the appellants were living on the suit land since they were born (over 60 years ago) and/or as early as 1963; while the matter

at hand was filed in 2020. They concluded that the matter was thus time barred. Further, to the appellants, time did not start to run after the respondent's appointment as administrator.

In reply, it was submitted by the respondent that appellants herein should not claim their purported rights under adverse possession as they were invitee on the location. Furthermore, to the respondent, the cause of action arose when the invitees declared their intention to dispossess the respondent (and other heirs) ownership of the suit farm in 2018. The respondent's conclusion hereof is that the cause of action arose from 2018, not otherwise.

Considering the submissions of both sides, for this Court to conclusively determine whether or not the matter was time barred; it first traces the history of the matter from record. The cause of action, according to ***J.B. Shirima and others v Humphrey Meena t/a Comfort Bus Service*** [1992] T.L.R 290, constitutes the answer to the question: *what wrong is being complained of in a given case.* Further, in ***Mashoda Game Fishing Lodge Ltd and two others v Board of Trustees of TANAPA*** [2002] TLR 319 it was held that a person is said to have a cause of action

against another where that person enjoys the right and the other person has infringed or breached that right and as a result the former suffers material loss or any other loss.

In the matter at hand, the cause of action can be traced at page 2 of the typed proceedings of the trial tribunal. The respondent reduced his grievances by stating that the first appellant chased him from the suit land in 2018. The relevant excerpt is;

> *"Mwaka 2018 mimi nilikuja kwa kaka yangu ili kupata muafaka wa mashamba hayo kaka yangu ambaye ni Kinoja Manyilizu alinifukuza na kuniambia kuwa sina shamba hapo na wala watoto wake nisiwasalimie…"*

From the quoted statement above, the respondent knew that there were no any wrong as the suit farm were had previously been entrusted to the appellants only for cultivation but the 1st appellant has declared his intention to own the suit farm. Therefore, the cause of action arose in 2018. Consequently, the suit before trial tribunal was filed within time. The second ground of appeal also lacks merit.

Regarding the third ground of appeal, it was contended that the judgement of the trial tribunal was by the chairman in exclusion of other members of the tribunal. In favor of this ground, it was submitted that as per section 4(4) of ***the Ward Tribunal Act***, Cap 206 R.E. 2002; the decision of the tribunal should be that of majority. In this matter, the appellants argued that four out of six members decided that the disputants are relatives and the land belong to them while the remaining opined for both sides to jointly own the property as a family land. However, the chairman came up with decision that the land belonged to the respondent only.

The respondent replied that, the judgement was rendered by the chairman but all members of the trial tribunal signed it to signify that the same was the judgement of the ward tribunal. To him, the judgment duly reflected the opinion of all members because they had opinioned that the heirs of Shilatu should remain with the suit property as well as the family of Manyilizu should own their ancestral land of Mayala.

This Court was also invited to the persuasion by the judgements involving assessors before primary court where their signatures signified their consent to the authorship of the judgement of the court. In rejoinder,

the appellants argued that, the law and procedure applicable in the primary court are different from that of ward tribunal.

From the submissions of the parties, the appellant's counsel is right. In terms of section 4(4) of ***the Ward Tribunal Act*** (*supra*), the judgement of the ward tribunal is responsive to the majority rule. However, in case of equality, the chairman possesses casting vote in additional to his original vote. Per the record, three members (John Nyembe, Mary L. Pombe and Charles Budigila) opined that the appellants should own land that belonged to Mayala; while the land which belonged to Shilatu should be owned by the respondent. In addition, the other three members (Monica Elias, Mectrida Fanuel and John L. Nyenge) opted for both parties to divide the suit land amongst themselves because they were relatives. Therefore, there was equality of votes.

Further, it is undisputed that the respondent did not sue for the land belonging to Mayala but that of Shilatu. The judgement of the ward tribunal is to the effect that the suit land belongs to the respondent on behalf of family of Shilatu. Thus;

"Baada ya ufafanuzi huu, baraza la ardhi linatoa hukumu kwamba maeneo yenye mgogoro ni mashamba halali ya mlalamikaji kwa niaba ya familia ya Kalombelo Shilatu…."

Therefore; it is my conclusion that the judgement of ward tribunal reflects the opinion of three members with casting vote of the chairperson that the respondent should own the suit land. Perhaps, the trial tribunal added their opinion that the appellants ought to own the land of Mayala (which was not in dispute) to reflect the primary function of the ward tribunal of securing and maintaining peace and harmony pursuant to ***Yakobo Magoiga Gichere v Peninah Yusuph*** (*supra*). I will not, therefore, be loath to find that the third ground of appeal is also unmerited.

The fourth ground of appeal is that, it was not proper for the trial tribunal to declare the respondent as lawful owner while he was suing as the administrator of the estates. For the appellants, it was submitted that the respondent herein represented himself as Charles K. Shilatu and not as administrator of the estates. Thus, to them, the first appellate court erred in law by relying on letters of administration only for the reason that they were found in case file. Appellants also argued that the subject letters were not

tendered and admitted in evidence, consequent of which it did not form part of tribunal record.

In reply, it was submitted by the respondent that the tribunal never adjudged the disputed land as to be owned by him in his personal capacity. He added that the appellants herein raised it a point before the 1st appellate tribunal, that the respondent was not an administrator but the same was decided fully. The appellants never raised it again before this court. It can, thus, be safely inferred that they became satisfied with the findings of the first appellate tribunal. In rejoinder it was submitted that the point being of law it can be raised at any stage.

I have dispassionately considered the submissions by both parties. As the Court has stated herein above, while disposing off the third ground of appeal; the trial tribunal declared the suit farm to be owned by the respondent on behalf of other family member of Shilatu. Nothing on record is suggestive that the suit land was declared to be owned by him in his personal capacity.

The counsel for the appellants, while agreeing with the respondent that was suing on representative capacity, he faults the trial tribunal for

relying on evidence not tendered and admitted before the trial tribunal. I respectfully disassociate with the appellants line of argument. My disentanglement is two-fold: **Firstly**, under section 45 of ***Cap 216*** (*supra*), the judgement of the ward tribunal should not be faulted for improper admission of evidence. The section reads;

> *" No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or* ***on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice****."*
> (Bolding rendered for emphasis)

For that reason, I cannot alter or reverse the trial tribunal decision for not indicating that the appellant was suing under administrative capacity or that the letters of administration was appended in the case file without being admitted. **Secondly**, the letters of administration form part of the documents for which the court should and/or can take judicial notice.

Pursuant to sections 58, 59 (1) (c) and (e) and 89 (1) of ***the Evidence Act***, Cap 6 R.E.2022; the subject document bears the signature of the magistrate and the court's seal. That being the law, I dismiss the 4th ground of appeal.

Through the last ground of appeal, the appellants are attacking the two lower tribunals that they disregarded cogent evidence of the appellants. In the first appeal, this point was not raised. Further, the same dwells on evidence. Therefore, I will not determine it.

It is a cardinal law that, the second appellate court will only determine matters of fact which were raised and determined in lower courts. See the cases of ***Richard Majenga v Specioza Sylivester***, Civil Appeal No. 208 of 2018; ***Remigious Muganga v Barrick Bulyanhulu Gold Mine***, Civil Appeal No. 47 of 2017; ***Halid Maulid v R***, Criminal Appeal No. 94 of 2021; and ***Robert s/o Nyakie @ Nati v R***, Criminal Appeal No. 393 of 2018 (all unreported).

In upshot all grounds of appeal lack merit and the appeal is hereby dismissed. Bearing that the disputants are relatives no orders as to cost. It is so ordered and right of appeal is fully explained to the parties.

C.K.K. Morris

Judge

June 16th, 2023

Judgement is delivered this **16th** day of **June, 2023** in the presence of Ms. Tupege Anna Mambosya and Mr. Ezekiel James learned counsel for the appellant and respondent respectively. The respondent is in attendance too.

C.K.K. Morris

Judge

June 16th, 2023