

TANZANIA / JUDGMENT

daniel lazaro vs alex elias jonatal

2023 tzhc 22357 31 october 2023

COURT
TZHCDECIDED
31 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (ARUSHA DISTRICT REGISTRY)
AT ARUSHA MISC. LAND APPEAL NO. 13 OF 2023 (B/U Arusha District Land and Housing
Tribunal Land Appeal No. 6/2022, Original Kisongo Ward Tribunal Application No. 108/2021)
DANIEL LAZARO.....APPELLANT VERSUS ALEX ELIAS
JONATAL..... RESPONDENT

JUDGMENT

29/09/2023 & 31/10/2023 GWAE, J In the Kisongo Ward Tribunal (trial tribunal), the Appellant, Daniel Lazaro successfully filed the land dispute. The trial tribunal held inter alia; that, the respondent, Alex Elias Jonatal to remove his house recently built therein and bicons that were erected while the matter was pending before it. However, on appeal by the respondent, before District Land and Housing Tribunal) Appellate tribunal), the appellant's award was reversed. Thus, this appeal consisting of three grounds of appeal to wit;

1. That, the Hon. chairperson erred in law and fact by holding that the decision made in favour of the appellant by ward tribunal was based on contradictory evidence made by the appellant against the truth as a result the appellant's right was prejudiced i
2. hat, the Hon. chairperson erred in law and fact by failure to take into consideration drawn sketch map which form part of evidence made when the parties visited locus in quo in which it was noted that the respondent was in occupation of more than the one he inherited from his late father
3. hat, the Hon. chairperson erred in law and fact by holding that the appellant and his witness failed to state when the suit land was trespassed against evidence revealed in trial tribunal proceedings However, When I examined the records the nature of the trial tribunal's award and evidence recorded by the trial court, I find it pertinent for ascertainment of pecuniary jurisdiction of the trial tribunal. Since it is said that after the alleged trespass by respondent built a house and he is farming on the disputed piece of land allegedly trespassed ("Eneo hilo amejenga na analima"). Bearing in mind of the pecuniary jurisdiction of the ward tribunal in terms of section 15 of the Land Disputes Courts' Act, Cap 216, Revised Edition, 2019 which reads;- "Notwithstanding the provisions of section 10 of the Ward Tribunals Act,

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". Basing on the above legal position of the law as far as pecuniary jurisdiction of the ward tribunals, I have entertained the parties to address the court on the value of the disputed land. The respondent who appeared unrepresented stated that his residential house plus land has more than 15 million shillings and that he built prior to institution of the case by the appellant before the ward tribunal. On the other hand, Ms. Kimale argued that since in the suit land, there is a dwelling house built before the institution of the case between the parties, it is Obviously clear that, the value of the disputed land plus developments thereon exceeds the pecuniary jurisdiction of the trial tribunal. That position was the situation before an amendment of the Land Disputes Courts Act, Cap 216, Revised Edition, 2019 via Act, No. 3 of 2021 where Ward tribunals had powers to hear and determine land disputes. She therefore submitted that the trial ward tribunal lacked jurisdiction. Before determining the issue of pecuniary jurisdiction of the ward tribunal, which heard and determined the parties' dispute, I wish to point out that it is a fundamental principle that, the issue of jurisdiction may be raised at any time. Hence, the parties as well as the court or tribunal have a duty to ascertain if it has the requisite jurisdiction to entertain the matter before it. I subscribe my holding in the case of *Peter Ng'homango vs. Attorney General*, Civil Appeal, No. 114 of 2011 (unreported), Court of Appeal of Tanzania in its decision dated 1st March 2012 stressed a 3 requirement to involve litigants to an issue of jurisdiction when observed by a trial court, by holding and I quote: "We are alive to the fact that the issue of jurisdiction can be raised at any time. However, with respect we think there was a need for the parties to be given the opportunity to address the court on that point of law". (See also *Yazidi Kassim t/ a Yazidi Auto Electric Repairs vs. The Attorney General*, Civil Application No. 354/04 of 2019 (unreported- CAT) and *John Sangawe vs. Rau River Village Council* [1992] T.LR 90. It is imperative that value of the disputed pieces of land should be indicated in the applications or suits and its boundaries. By doing so, the ward tribunal or any other adjudicative body would be in a better position to ascertain whether it has the necessary jurisdiction or not prior to hearing and determination of a matter before it. In our case, the appellant just stated that the respondent trespassed parts of his land without indicating the size of the land trespassed and the value of the same including the development thereon. It is quite imprecise and imprudent if the dwelling house in Kisongo area within Arumeru in Arusha Region plus the land worth less than 3 million or less. It is pertinent therefore to note indication of values, size of the suit land and boundaries are vital things to be ascertained while an application or suit is presented for filing in a court of law or quasi-judicial body. Since the parties cannot confer courts of law with the requisite jurisdiction except by a statute, the proceedings and decisions of the land tribunals below must face consequential order as I herein under do. Consequently, the proceedings and decisions of the land courts below are hereby quashed and set aside. The parties are at liberty to institute the dispute between them before a competent court. If the dispute is filed in the District Land and Housing Tribunal of Arusha, let the dispute be heard by another chairperson other than Ms. Kagaruki-Esq. Since the issue of jurisdiction was raised by the court suo moto, I find it just

and fair to make no order as to costs of this appeal and those incurred in the tribunals below. It is so ordered. DATED and DELIVERED at ARUSHA this 31st October 2023
MOHAIMEDR. GWAE JUDGE 5

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