

TANZANIA / JUDGMENT

MADUHU DOTO

COURT
TANZLIIDECIDED
28 February 2025

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUB REGISTRY OF SHINYANGA
AT SHINYANGA LAND APPEAL NO. 26626 OF 2024 (Arising from the Judgment and Decree of the
District Land and Housing Tribunal of Maswa at Maswa in Land Application No 77 of 2023)
MADUHU DOTOAPPELLANT VERSUS MILEMBE LIMBU
SANANE1ST RESPONDENT MAKENYA LIMBU SANANE.....2ND
RESPONDENT

JUDGMENT

24th January & 28th February, 2025 Massam J. The 1st respondent being an administratrix of the late Sanane Makenya before the District Land and Housing Tribunal of Maswa in Land Application No. 77 of 2023, sued the appellant and 2nd respondent, claiming over the ownership of 30 acres which situated at Ikungulipu village, Luguru ward, in Itilima District within Simiyu Region. The 1st respondent claimed that the suit land is the property of her deceased father and has been using the same undisturbed until his death 2000, while the appellant claimed that he bought the suit land from the 2nd respondent. 1 After the full trial, the tribunal declared the suit land to be the property of the late Limbu Sanane Makenya and ordered the appellant to vacate the suit land. Being aggrieved by the decision of the trial tribunal, the appellant chose to appeal to this court based on three grounds that,

1. That the trial Tribunal Chairman erred in law and fact in not holding that the 1strespondent's claim for recovery of possession of suit land from the Appellant was time barred.
2. That the 1strespondent having failed to adduce evidence establishing a location where the suit land is situated and such 1strespondent having failed too to adduced evidence proving proper boundaries/description of suit land; the trial Tribunal Chairman erred in law and fact in not holding that the 1strespondent did not prove her case on a standard required by law.
3. That the trial Tribunal Chairman erred in law and fact in holding that the Appellant was licensed to use the suit land. During the hearing of the case, the appellant enjoyed the legal service of Mr. Audax Constantine advocate whilst the respondent was represented by Mr. Samweli Lugundiga advocate by consensus they 2 agreed to dispose this appeal by way of written submission, and the court granted prayers and scheduled the file date as follows

appellant's submission 31/1/2025, reply on 7/2/2025 and rejoinder if any on 14/2/2025 and judgment on 28/2/2025 the court orders were complied with. On suo moto this court found needful the parties to address on some issues and by consensus both parties agreed to address this court on the following issues

1. Whether a case before trial tribunal was competent; and
2. Whether if such case was incompetently before the trial tribunal, the parties were prejudiced Starting with the first issue whether a case before trial tribunal was competent. Mr. Audax argued that the suit was not competent before the tribunal because first respondent was not sure with what she was claiming against the appellant and second respondent, at paragraph 6(a)(i) of the application, the first respondent herein alleged basically that in 2021 the respondent (she did not disclose him) trespassed on 30 acres of land which belonged to the estate of her deceased father. Likewise, paragraph 6 (a) (v) of the same application first respondent alleged that her land was trespassed on by first respondent (the 3 appellant in this appeal). Also at paragraph 6(a) (ii) (iv) of such application the first respondent herein alleged that the suit land was lent to the first respondent (the appellant herein) for purpose of grazing cattle. Moreover, at paragraph 6(a) (iii) of the same application, it was alleged that in 2021 the first respondent herein went to claim for recovery of possession of the land and that she was told by the respondent that he had already purchased it. Again, she did not disclose in paragraph 6(a) (iii) of her application which between two respondents sued at trial tribunal and who told her that he had already purchased the land. Coming to the second issue as whether the incompetence of the suit before tribunal prejudiced the parties. Mr. Audax urged that the parties were prejudiced due to an uncertainty of the first respondent's case, the appellant was denied an opportunity to defend himself because it not clear which cause of action, among many and distinct ones, the trial tribunal was required to determine and decree rights of parties thereof. For instance, at page 4 of typed proceedings, the trial tribunal framed one central issue, he argued that was not only vague but also incorrect, thus: "Je, ni kweli mdaiwa wa kwanza aliuzia eneo la familia ya mdai au alikodishwa". 4 Finally, he prayed this Honourable Court to invoke its revisionary powers under section 43(1) (b) and (2) of the Land Disputes Courts Act [Cap 216 RE 2019] and nullify, quash and set aside all proceedings, judgment and decree in Land Application No. 77 of 2024 and this appeal be struck out without costs. On his side Mr. Lugundiga responded that Land Application No. 77 of 2024 was competent before the trial tribunal because paragraph 6 (a) of Form No. 1 of Second Schedule of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, GN No. 174 of 2003 is on the cause of action/brief statement of facts constituting the claim and also the provisions of Regulation 3(2) (c) of the same GN No. 174 of 2003 which states on the nature of disputes and cause of action, this put an obligation on the applicant/plaintiff to disclose the fact/cause of action which caused him/her to go and claim before the tribunal/court. He cemented his case by referring the case Antony Leonard Msanze & Another vs Juliana Elias Msanze, Civil Appeal No. 76 of 2021, held on the cause of action that, "We laid down relevant legal principles on cause of action in JOHN M. BYOMBALIRWA VS AGENCY MARTIME

INTERNATIONALE (supra). Through this decision, we first pointed out that although the expression “cause of action” has not been defined under the Civil Procedure Code, 5 but that expression simply means essential facts which a plaintiff in a suit has to plead and later prove by evidence if he wants to succeed in the suit. Secondly, we laid down that for purpose of deciding whether or not a plaint discloses a cause of action; courts should NOT go far into written statements of defence. But they should discover a cause of action by looking only at the plaint. Thirdly, we also said that where the plaint does not disclose a cause of action, the remedy is NOT for the court to dismiss the plaint, but to reject it.” Now, Mr. Lugundiga argued that the 1st respondent, in her application (pleading) clearly put her cause of action by pleading that she wanted the 30 acres of land which were under the possession of the appellant to be retained back as it was among of the estate of her late father, LIMBU SANANE MAKENYA. He cemented his argument by referring the case of Alpha Risk Management Ltd vs Stella Maris University College & St. Augustine University of Tanzania (SAUT) Civil Case No. 9 Of 2022 (Unreported) at Mtwara held that; “Premised on the above, I have had a keen look at the paragraphs referred to by both parties to find out if they disclose the cause of action. These are paragraph 2, 3, 4 and 48 of the plaint. Reading the paragraphs between the lines in conjunction with the submissions of the 6 parties, I am fortified that there is a clear cause of action disclosed vide the paragraphs referred to by the principal officer.” Again, he submitted that under paragraph 6(a) (i), (ii), (iv) and

- (v) of the 1st respondent’s application (pleading) are clear that, the 1st respondent was claiming 30 acres of land which were unlawfully possessed by the appellant in aiding with the 2nd respondent. While under paragraph 6(a) (v) revealed that the appellant, trespassed on the disputed land in 2021 an act which caused the 1st respondent to file the dispute before the tribunal to seek for her legal rights. Moreover, Mr. Lugundiga said that, the counsel for appellant is attacking paragraph 6(a) (i), (ii), (iv) and (v) of the 1st respondent’s application (pleading) is just trying to deceive the court using technicalities as the mentioned paragraphs establish on how the cause of action rose between the parties. However even if it could be found that, there some errors in the contention of the appellant, the court should invoke overriding objective principle and decide to determine the matter justly. See the case of Yacobo Magoiga Gechere vs. Peninah Yusuph, Civil Appeal No. 55 of 2017 Finally, he said that the case before the trial tribunal was competent and it was properly adjudicated by the tribunal. 7 Coming to the second issue if such suit was incompetently before the trial tribunal, the parties were prejudice. Mr. Lugundiga said that the parties were not prejudiced by the pleading of the 1st respondent because she was claiming the possession of the disputed land measured at 30 acres of which the 2nd respondent in this appeal rented it for the appellant for grazing but later appellant claimed to his. The appellant and 2nd respondent was fully defended their case and thus the appellant in his evidence managed to defend that, on page 9 and 10 of the typed record, “.....hapa niko kwa shamba langu amenishitaki Milembe Limbu hilo shamba ni langu nililipata baada ya kuuziwa na wana familia ya Limbu Sanane.....” and this signifies that the appellant was aware with what the 1st respondent was claiming from them. Finally, he submitted that the case was

competent before the trial tribunal and neither parties was prejudiced, both parties defended their case and prayed this court to uphold the tribunal judgment with costs. Having scanned the submission filed by both parties, the issue for deliberation is whether the appeal has merit or not. I am aware that the 1st appellate court has power to re-evaluate on the record and drawn its own inference and findings of fact subject, having regard to the fact that the trial court had the advantage of watching and assessing the witness as they gave evidence. See the case 8 of Paulina Samson Ndawavya vs Theresia Thomas Madaha, Civil Appeal No. 45 of 2017 CAT Mwanza, Jamal. A. Tamim vs. Felix Mkosamali & The Attorney General, Civil Appeal No.110 of 2012 (unreported) and Martha Wejja vs. Attorney General and Another

(1982) TLR 35. Also, it is the principle that in civil cases, that the burden of proof lies on the person who alleges anything in his favor. More over the burden of proof envisaged above is on the balance of probabilities. See the case of Anthony Masanga vs. Penina (Mama Mgesi) and Another, Civil Appeal No. 118 of 2014 and Hamza Byarumshengo vs. Fulgencia Manyana and 4 Others, Civil Appeal No. 33 of 2017 (both unreported). Notably, the civil principles above are also reflected under Regulation 1(2) and Regulation 6 of the Magistrate's Courts (Rules of Evidence in Primary Courts GN 22 of 1964, the law governing evidence in Primary courts. Therefore, in determining this appeal, I shall be guided by the above principles. Starting with the first issue whether a case before trial tribunal was competent. Mr. Audax argued that the application was incompetent because the appellant failed to disclose who was sued between the two 9 respondents at trial tribunal but also the cause of action was ambiguous. However, Mr. Lugundiga argued that the application was competent because she claimed 30 acres of land which were under the possession of the appellant to be retained back as an estate of her late father, Limbu Sanane Makenya. Again, Mr. Lugundiga said even if it could be found that, there some errors in the application the court should invoke overriding objective principle and decide to determine the matter justly. It is also important to note that parties are bound by their pleadings. See, Aspetro Investment Company Limited vs. Jawinga Company Limited, Civil Appeal No.8/2015, Peter Ng'omango vs. The Attorney General, Civil Appeal No. 214 of 2011 and James Funga Gwagilo vs. The Attorney General [2004] TLR 161. Having scanned the submission from both and going through the records this court found out that the application filed at trial tribunal failed to disclose who was sued between the appellant and the second respondent as per paragraph 6(a) (i) (ii), (iii) and (iv) of the application and as we all knows that always parties are bound with their pleadings. Thus I agree with appellant's counsel that failure of the appellant to disclose who was sued between the two made the said application before tribunal incompetent. 10 Moreover, the cause of action in the application filed at tribunal was uncertain because it disclosed more than one cause of actions i.e, trespass, purchase, lent for grazing of the cattle and even the tribunal failed to raise issues on all cause of actions which leaves contested material issues of facts unresolved. See Stanslaus Rugaba Kasusura and the Attorney General vs. Phares Kabuye, [1982] T.L.R. 338 and Abubakari I.H. Kilongo vs. The Republic, Criminal Appeal No. 230 of

202. Again, I disagree with the respondent counsel that failure to disclose who was sued was minor errors which can be cured by overriding principle and even the cases cited by the respondents' counsel are distinguishable with the case at hand because there was uncertainty (ambiguous) cause of action, but also the overriding principle cannot be used to blind procedure requirement of the law. See the case of SGS Societe Generale de Surveillance SA and Another vs. VIP Engineering & Marketing Ltd and Another, Civil Appeal No. 124 of 2017 (unreported) and Hamis Mdada and another vs The Registered Trustees of Islamic Foundation, Civil Application, No 330/11 of 2022. From above observations, I find that a case before the trial was incompetent. 11 Coming to the second issue as whether the incompetence of the suit before tribunal prejudiced the parties. Mr Audax urged that the parties were prejudiced due to an uncertainty of the first respondent's case, the appellant was denied an opportunity to properly defend himself, because it is not clear on which distinct causes of action he was specifically called upon to answer and defend. However, Mr. Lugundiga said that the parties were not prejudiced by the pleading of the 1st respondent because she was claiming the possession of the disputed land measured at 30 acres of which the 2nd respondent in this appeal rented it for the appellant for grazing but later appellant claimed to his. I have considered the submission of both parties and going through the record. As I have stated earlier that there was ambiguous cause of action, appellant and 2nd respondent was not accorded fair trial and adequate opportunity to defend their case, because they were not aware on which cause of action should defend their case, thus were prejudiced by the incompetent application, hence denied fair hearing and opportunity to defend their case. See the case of Suba Agro-trading and Engineering Company Ltd and Another vs. Seedco Tanzania Ltd, Civil Appeal No 184 of 2020 CAT Arusha, Mbeya-Rukwa Autoparts and Transport Ltd vs Jestina George Mwakyoma 12

[2003] TLR 251 and Said Mohamed Said vs Muhusin Amiri and Another, Civil Appeal No 110/2020. From the analysis, I find that the parties were prejudiced with incompetent application at trial tribunal. Consequently, this appeal is allowed to extent explained. The judgement and decree of the trial tribunal are hereby quashed and set aside. I order that if the parties still wish they may file a fresh matter which shall be tried by another chairman and another set of assessors. In regard of the relationship between parties to be relatives. No order as to costs. It is so ordered. DATED at SHINYANGA this 28th February, 2025. R. B. Massam Judge 13

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/328372/source_file/5fc4f43a58fd46a0/MADUHU_DOTO.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/maduhu-doto-competenceofpleadings-tanzlii-2025>

Prepared on 13 October 2026 · Esheria