

TANZANIA / JUDGMENT

raphael matiko makolom vs merengo gesewani 2024 tzhc 332 21 february 2024

COURT
TZHCDECIDED
21 February 2024

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY AT MUSOMA) Misc. LAND APPEAL No. 15 OF 2023 (Arising from the
District Land and Housing Tribunal for Mara at Serengeti in Land Appeal No. 81 of 2021;
Originating from Nyansurura Ward Tribunal in Land Dispute No. 1 of 2020) RAPHAEL MATIKO
MAKOLOM APPELLANT Versus MERENGO
GESEWANI..... RESPONDENT

RULING

07.02.2024 & 21.02.2024 Mtulya, J. The respondent, Mr. Merengo Gesewani had sued the appellant, Mr. Raphael Matiko Makolom in the Nyansurura Ward Tribunal (the ward tribunal) in Land Dispute No. 1 of 2020 (the dispute) for recovery of land located at Nyansurura Ward in Serengeti District of Mara Region. The ward tribunal heard the parties and their associated evidences and finally had resolved for the respondent. The decision of the ward tribunal aggrieved the appellant hence approached the District Land and Housing Tribunal for Mara at Serengeti (the district tribunal) in Land Appeal No. 81 of 2021 (the appeal) which also resolved in favour of the respondent. The appellant was also dissatisfied with the judgment of the district tribunal hence approached this court via Misc. Land Appeal i No. 15 of 2023 (the appeal) to dispute both decisions of the lower tribunals. However, before the hearing of the appeal could take its course, the respondent had raised two (2) points of law resisting the jurisdiction of this court to resolve the appeal, viz, first, the appeal has been over taken by event as the appealable decree was already executed; and second, the appeal is bad in law for challenging two lower courts decisions at the same time. As the practice so requires, when a point of law resisting jurisdiction of a court is raised, it must be determined before proceeding could take its course on the merit of the matter. According to the Court of Appeal (the Court), it is now settled law that an objection on point of law challenging the jurisdiction of the court can be raised at any stage and it has to be determined first before proceeding to the substance of the matter (see: R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai, Civil Appeal No. 179 of 2016). Following the directives of the Court, the parties were called in this court on 15th November 2023 to submit relevant materials for and against the points. However, the appellant had prayed to argue the points by way of written submissions and the prayer was granted and scheduling order

was placed on record. The submissions were complete as per the scheduling order on 20th December 2023. According to the appellant, the second objection is related to the 2 previous decisions of this court in *George Ntagera v. Shabani Madandi*, Misc. Land Appeal No. 2 of 2022 and *Pendo M. Iranga v. Kitama Elias* (PC) Civil Appeal No. 44 of 2022, where it was resolved that appeals from ward tribunals do not lie to this court. In response of the submission, the appellant contended that the indicated precedents are distinguishable. However, he declined to give necessary materials in favor of his submission. In his opinion, this court may decline legal technicalities in favor of the substance of the appeal. I perused the two cited cases and found that the position stated by the respondent is correct and vivid. In the precedent of *George Ntagera v. Shabani Madandi* (supra) resolved on 11th August 2022, this court, at page 3 & 4 of the Ruling, had resolved that: ...this court has no jurisdiction to question decision of the ward tribunals directly. Appeals from the ward tribunals do not lie to this court. They lie to the DLHT...it is obvious that the appeal was framed wrongly and should not be left to stand for it is improperly before this court. The decision was celebrated by this court within a year in the decision of *Pendo M. Iranga v. Kitama Elias* (supra). I think the 3 decisions are based on the spirit of enactment in section 38 (1) and 42 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] (the Act). Section 38 (1) of the Act, in brief, provides that: any party aggrieved by a decision of the district tribunal, in exercise of its appellate or revisional jurisdiction, may appeal to the High Court, whereas section 42 of the Act empowers this court to call for additional evidence from the district tribunal, when it thinks necessary to do so. The dual enactments empower this court to directly challenge decisions of the district tribunal at its appellate or revisional mandate and not to directly challenge the decision of ward tribunals. The indicated enactments were invited and considered by this court and the Court in a bunch of precedents (see: *Chenge Magwega Chenge v. Specioza Mochubi*, Misc. Land Appeal No. 13 of 2023; *George Ntagera v. Shabani Madandi* (supra); *Pendo M. Iranga v. Kitama Elias* (supra); and *Yakobo Magoiga Gichele v. Peninah Yusuph*, Civil Appeal No. 55 of 2017. I am aware the appellant had declined to reply the reasoning of this court in the indicated precedents of *George Ntagera v. Shabani Madandi* (supra) and *Pendo M. Iranga v. Kitama Elias* (supra) and proceeded further to ask this court to avoid legal technicalities. The appellant, may impliedly, be inviting the principle of overriding objective enacted in section 3A (1) of the Civil Procedure Code [Cap. 33 R.E. 2022] (the Code) and enactment of section 45 of the Act. I am conversant that the principle has its root in the enactment of articles 13 (6) (a) and 107A (2) (e) of the Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002] (the Constitution). This court and the Court have, in certain circumstances, invited and applied the principle (see: *Chenge Magwega Chenge v. Specioza Mochubi* (supra); *Yakobo Magoiga Gichele v. Peninah Yusuph* (supra); and *Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)*, Civil Appeal No. 35 of 2017). However, I am familiar that the principle cannot be blindly invited and applied against the mandatory provisions of the procedural law which go to the very foundation of the case (see: *Mondorosi Village Council & Two Others v. Tanzania Breweries limited & Four Others*, Civil Appeal No. 66 of 2017. Similarly, this court cannot disregard its two (2) previous decisions on the same subject matter, unless there are compelling reasons. I do not see any compelling reason in the instant appeal. The appellant cannot challenge the decisions of two lower tribunals in this court. This appeal is incompetent before this court. Having said so, I am

moved to sustain the second point of the protests registered by the respondent. In that case, I struck out the 5 appeal for want of proper application of the indicated enactments and precedents on the subject. Regarding the first point of objection, this court refrains from entertaining it. Engaging on the first contest will be an academic exercise after having found the first point has merit and the appeal is incompetent. I make no order as to costs from the fact that the appellant is lay person and is prosecuting his case in good faith in search of justice. This Ruling was delivered in Chambers under the Seal of this court in the presence of appellant, Mr. Raphael Matiko Makolom and in the presence of respondent, Mr. Merengo Gesewani, and his learned counsel, Mr. Emmanuel Gervas. 21.02.2024 6

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