**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**
**(MWANZA DISTRICT REGISTRY)**
**AT MWANZA**

**LAND APPEAL NO. 34 OF 2021**
*(Arising from judgment and decree of the District Land and Housing Tribunal for Mwanza in land application No. 316 of 2019; dated 03/07/2020 By, Mayeye S. M, Chairman)*

**ILEMELA MUNICIPAL..... APPELLANT**

**VERSUS**

**ELIA MONGI..... 1st RESPONDENT**
**LUGANO NKISU JOSHU.....2nd RESPONDENT**
**(Administrator of the estate of the**
**Late Ahmed Yessaya Mwakahabala)**
**CHARLES D. LONGO.....3rd RESPONDENT**
**JOSIAH MARWA WAMBURA.....4th RESPONDENT**
**HAPPINESS JACKSON ITEMBE.....5th RESPONDENT**
**(Administratrix of the estate of the**
**Late Robin Machage Maseke)**
**ALEXANDER FREDDY MCHAURU.....6th RESPONDENT**
**DEOGRATIUS L. KABOGO.....7th RESPONDENT**
**CONSOLATHA M. KOMBE.....8th RESPONDENT**
**(Administratrix of the estates of the**
**Late Manase Ephraim Manase)**
**OBEDI TIRUGUMILWA NKONGOKI.....9th RESPONDENT**
**AMANI NASSORO LIBENANGA.....10th RESPONDENT**
**JOHN THOMAS KATARAIHYA.....11th RESPONDENT**
**WINTON JANUARY MWASA.....12th RESPONDENT**

## JUDGMENT

*13th July & 9th September 2022*

**ITEMBA, J.**

This appeal originates from the judgment on admission by the District Land and Housing Tribunal for Mwanza (DLHT) dated 3rd July 2020 in Land application No. 316 of 2019.

The facts leading to this appeal are that; the respondents herein had purchased plots from Ministry for Works respectively. The said plots are low density, the smallest having 2195 sqm and the biggest with 6003 sqm. It was alleged by the respondents that in the sale process, the appellant (Ilemela Municipal Council) resurveyed and encroached the suit plots something which aggravated them. They successfully filed application No. 316 of 2019 against the appellant before the DLHT. The trial tribunal considered the respondent's application and entered a judgment on admission in favor of the respondents. The trial tribunal further ordered that; the respondents are lawful owners of the disputed plots, the appellant was permanently restricted from interfering with applicant's plots, the appellant and the registrar of titles were also ordered to issue all necessary documents to the respondents including certificate of Right of occupancy to the applicants.

Upon being aggrieved by the decision, the appellant appealed to this court, and filed a petition armed with five grounds which reads as follows:

1. *That the tribunal lacked pecuniary jurisdiction to entertain the matter.*
2. *That there was misjoinder and non-joinder of parties.*

3. *That the tribunal erred in law in holding that the respondent before it admitted to all the allegations and prayers.*
4. *That the tribunal erred in fact and law by granting all prayers as if they were admitted while they were contested.*
5. *That the tribunal wrongly allowed the counsel for the applicant to address new points and deny the respondent's counsel right to reply to them.*

Hearing of appeal was done by way of written submissions consistent with the schedule drawn by the Court. Submitting in support of the appeal, the appellant submitted that, there are three limbs concerning the issue of jurisdiction which features as ground one of this appeal. The first limb is the issue of pecuniary jurisdiction of the trial tribunal. He submitted that according to Section 33 (2) of the Land Disputes Courts Act Cap. 216 [R.E2019] the tribunals' pecuniary jurisdiction on immovable properties is only limited to Tshs. 300,000,000/= but looking at part 4 of the application estimated value of the suit properties is Tshs. 150,000,000/= per plot which makes a total of

Tshs. 2,100,000,000/= for all applicants this according to him is far beyond the limit prescribed by the law. He cited the decision in the case of ***Tanzania Pharmaceutical Industries Limited vs Dr. Ephraim Njau*** (1999) TLR 299 and ***Shyan Tank and Others vs Ne Palace Hotel*** (1971) EA 199 to support his arguments.

In respect of the second limb on jurisdiction which is regarding the powers of the trial tribunal to issue Judgment on admission, he submitted that judgment on admission is only entered upon an application to that effect. He is of the view that jurisdiction of the court is derived from being properly moved by the parties something which was not done in the trial tribunal, the counsel for the applicants cited Order XV Rule I Of the CPC which is about consent judgment as opposed to Order XII Rule 4 of the CPC which was relied by the court. He holds the view in that the court was not properly moved hence, it didn't have jurisdiction to deliver judgment on admission. In strengthening his averments, the counsel for the appellant referred to the decision in the case ***of Prime II Company and Another vs Kamaka Co. Ltd,*** Civil Revision No. 66 of 2020 HC at Dar es Salaam, ***Amir Sundeerji vs J.W. Ladwa (1977) Limited,*** Misc. Civil Application No. 820 of 2016 HC at Dar es Salaam (both accessible through Tanzilii website) and ***Chama Cha Walimu Tanzania vs The***

***Attorney General,*** Civil Application No. 151 of 2008 at Dar es Salaam (Unreported).

Concerning the last limb on the jurisdiction, he submitted that the trial tribunal did not have powers to compose a document titled 'judgment on admission' the process must be initiated by an application and in the instant matter, it was not done.

Regarding the second ground of appeal, the appellant complains that the necessary party, in this case, was not joined. He submitted that the Ministry of Works or the Tanzania Building Agency which features throughout the application filed by the respondents was a necessary party. He submitted further that TBA is referred in para 6 (a), (i), (ii), (ix), and (xi) of the application, and since it is said that the applicant purchased the disputed properties from the Ministry, therefore, the seller in most circumstances is a necessary party to be in a landed dispute. In supporting his contention, he cited the decision in the case of ***Bakari S. Gonza vs Swalehe R. Kitilika,*** Land Appeal No. 18 of 2018 HC Land Division at Dar es Salaam (Unreported). He added that the commissioner for lands was also a necessary party as per provisions under Section 14 (6) of the Land Act for consideration but he cannot do anything further as explicitly prohibited by Section 14 (1) of the Land Act, in connection to these averments he cited the holding in the case of ***Christina Jalison***

***Mwamlima and Another vs Frank Jalison Mwamlima and 4 Others,*** Land Case No. 19 of 2017 HC Mbeya (Unreported).

In respect of the third and the fourth grounds of appeal, the learned counsel for the appellant opted to argue them collectively, submitting on these grounds, he stated that the purported admission made by the appellant in paragraphs 6 (a), (ix) and (xii) of the application according to him does not qualify to be termed as admission. He states that the admission must be clear, unambiguous, agreed, noted, not disputed, and unequivocal. He insists that it was not even proper for the trial chairman to hold that the WSD was tainted with the evasive denial which amounted to implied admission. According to him, this was an injustice because other paragraphs were denied and disputed, the trial tribunal ought to have refused such application for judgment on admission only on the ground that there are other serious matters of law and facts to be determined.

Regarding the fifth ground of appeal, the appellant through his counsel avers that during rejoinder the applicants have departed from what they have submitted in their submission in chief. That Order VIII of the CPC and the issue of evasive denial does not feature anywhere in the submission in chief, it only appeared in the rejoinder. He submits that this act **vitiated injustice** to the appellant since he was not allowed to reply

to the new issues which were introduced in the rejoinder. He supported his contention by the decision in the case of ***James Jeston Mnyamwezi vs Republic,*** Misc. Criminal Application No. 55 of 2020 HC Mbeya (Unreported). In the end, he prays this Court to make good by nullifying the trial proceedings so that finally justice can smile.

Rebutting the appellant's contention, the respondents began by castigating the point of pecuniary jurisdiction of the trial tribunal. He argued that it is true that Section 33 (2) of the Land Disputes Courts Act (Supra) sets the limit of the tribunal's pecuniary jurisdiction to Tshs. 300,000,000/= in case of immovable properties. He kept on contending that, in application No. 316 of 2019 which is the subject of this appeal, the estimated value of the suit property was stated to be Tshs. 150,000,000/= for each respondent's plot and the applicants never estimated their properties to value Tshs. 2,100,000,000/=. This is because the application involved several claimants under one action, and in such circumstances, the law is clear that in determining pecuniary jurisdiction of the court when the matter involves several claimants under one action the value of the subject matter of each individual is considered differently, as it was stated in the case of ***Charles Lugu vs Rahel Bukwaya & 14 Others,*** Land Appeal No. 85 of 2010 H.C Mwanza (Unreported). Based on these contentions he holds the view that the trial

tribunal had pecuniary jurisdiction to hear and determine the matter as it did.

On the second limb of the first ground, that the trial tribunal had no powers to issue judgment on admission based on Order XV Rule 1 of the CPC (Supra), he is of the view that it is a serious misconception by the counsel for the appellant. He added that under Order VIII Rule 5, Order XV Rule 1, and Order XII Rule 4 of the Civil Procedure Code (Supra) judgment on admission may be entered against the defendant who concedes to the allegations levelled against him and the fact that the counsel for the appellant has failed to object on the applicability of Order XV Rule 1 during submission thus by invoking Order XII Rule 4 during his reply submission, he hascured the mischief.

Regarding the issue that there was no application before the Court which proceeded the said judgment, he attacks that, it is a serious misconception because the counsel for the then applicants made oral application and the counsel for the then respondent made a reply without objection.

In respect of nonjoinder of parties, he contends that it is misplaced as provisions under Order 1 Rule 9 of the CPC suit cannot be defeated by the reasons of the misjoinder or nonjoinder of the parties and under Order 1 Rule 13 the law is clear that objections on the ground of nonjoinder of

parties shall be taken at the earliest possible opportunity. He insists that this issue ought to have been placed before court at the earliest stage and not at this point. On the case cited by the counsel for the appellant, he says that they are distinguishable as the circumstances of this matter are different.

On the issue of whether there was admission warranting the trial tribunal to enter judgment on admission he thinks that admissions in the civil suits can be categorized into three, one actual admission, oral or by documents, two the express or implied admissions from pleadings or by non-traverse by agreement and three, by agreement or by notice in which the admissions need not be proved unless the court otherwise thinks or requires the same to be proved. Based on that spirit he cited the decision in the case of **Beda Y. Mgaya vs The Honourable Attorney General**, Civil Case No. 112 of 2019 HC at Dar es Salaam (Unreported) in which it was emphasized that for Order VIII Rule 4 of the CPC, it is incumbent for the defendant to deny every material allegation made against him something which was not done in the instant matter. The respondent through WSD especially paragraphs 6 (a) (x) and (xi) gives evasive denial against allegations that were raised against him which is contrary to provisions under Order VIII Rule 3, 4, and 5 of the CPC according to him it amounted to an admission of the same.

In respect of the fifth ground of appeal through which the appellant decries that he was not given a right to be heard on what he purports to be a new issue raised during rejoinder, he vehemently contends that proceedings of the trial tribunal are very clear on this issue, the court could not grant a prayer which was not made before it, the counsel for the appellant neither prayed for surrejoinder nor raised any objection during rejoinder submission by the counsel for the applicant. He added that even citing Order VIII of the CPC during rejoinder submissions was not a new aspect because it was the issue of law and not of fact.

While drawing his conclusion, the learned counsel for the respondents brought two issues to the attention of the court one, the relief by the appellant that the court should 'make good by nullifying the trial proceedings so that finally justice can smile'. He thinks that this language does not suit an officer of the Court and cannot be granted by this court. Two, he is of the view that the appellant ought to have sought revision instead of appeal because under Section 43 (1) (b) of the Land Disputes Court Act, CAP 216 R.E 2019, judgment on admission is not appealable. In the end, he prays for the appeal to be dismissed with costs and for the decision of the trial tribunal to be upheld.

Having heard the rival submissions made by both parties, the Court's duty, at this stage of the proceedings, is to determine whether the appeal carries any merit.

Concerning the mode of challenging the decision, the law is settled. It is to effect, that preliminary orders or interlocutory decision which has the effect of finally determining the suit are appealable. This position of law was stated in an ancient case of ***Bozson v. Artrincham Urban District Council*** [1903] ***1KB*** in which lord Alverston stated as follows:

> *'It seems to me that the real test for determining this question ought to be this; Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order.'*

The judgment on admission which is the subject of this appeal had the effect of finally determining the rights of the parties hence, the appeal can be preferred against such decisions. See also, ***Junior Construction Company Limited and 2 Others vs Mantrac Tanzania Limited,*** CAT Civil Appeal No. 252 of 2019 (Unreported).

Having settled this issue which has been raised by the counsel for the respondents in his reply submission now, as I embark on the disposal expedition.

The 1st ground challenges the jurisdiction of the tribunal. It was mentioned by the counsel for the appellant that this matter was not raised before the trial tribunal but he argued that a point of law can be raised at any stage including an appeal. In support of that argument, he also cited the case of **Tanzania Pharmaceutical Industries Limited v Dr. Elphraim Njau** (supra). I would agree with the appellant in this aspect because it is jurisdiction which determine whether the court had competency and whether proceedings and decisions thereof were valid. Based on that, jurisdiction has to be determined first before proceeding to determine the substantive matter. See also the case of **Shahida Abdul Hassanal Kassam v Mahedi Mohamed Gulamali Kanji,** Civil Application No. 42 of 1999 (unreported).

To start with, it pertinent to refer to **section 33 of the Land Disputes Courts Act, CAP 216 R.E, 20019**, which provides for the Jurisdiction of the District Land and Housing Tribunal and I will quote:

*'33.-(1) The District Land and Housing Tribunal shall have and exercise original jurisdiction-*

*(a) in all proceedings under the Land Act, the Village Land Act, the Customary Leaseholds (Enfranchisement) Act, the Rent Restriction Act and the Regulation of Land Tenure (Established Village) Act; and*

*(b) in all such other proceedings relating to land under any written law in respect of which jurisdiction is conferred on a District Land and Housing Tribunal by any such law.*

*(2) The jurisdiction conferred under subsection (1) shall be limited-*

*(a) in proceedings for the recovery of possession* ***of immovable property,*** *to proceedings in which the value of the property* ***does not exceed three hundred million shillings;*** *and*

*(b) in other proceedings where the subject matter is capable of being estimated at a money value, to proceedings in which the value of the subject matter does not exceed two hundred million shillings.'*

(**Emphasis supplied**)

In the case at hand, item no. 4 of the respondent's application, reads as follows;

*4. 'the estimated value of the suit properties: Tshs. 150,000,000/= say Tanzanian shillings One Hundred Fifty Million* ***for each plot****.'*

As stated by the counsel for the appellant, the words for each plot have been bolded by the applicant to show emphasis. The appellant states that if the value of each house is approximately 150,000,000/= and if number of houses are 14 then the value of the properties in total is 2.1

billion which is above the jurisdiction of the DLHT. The respondent's counsel is of the view that; what needed to be considered is the value of each respondent's plot and not total the value of all 14 plots because the said application involved several claimants under one action.

With respect, I disagree with the counsel for the respondent that in determining jurisdiction, consideration has to be done on each respondent's plot. I have gone through the case of **Charles Lugu** (supra) cited by the respondent's counsel, humbly, I will depart from the findings therein. In the present application, all the 14 plots were bought by 12 different claimants who are the respondents herein. However, the dispute regarding the same 14 plots was to be determined in a single application, before the same chairman of the tribunal and even the decision and reliefs thereof, if any, would have been in respect of 14 plots. Further, the appellant on her side, being the respondent, was dealing with the application against all 14 plots not against just 1 plot.

It is in record that each of the claimant's plots has a value of Tshs. 150,00,000/=, since the claimants chose to file their application jointly, these 14 houses are the subject matter of the application in it's totality and not in isolation. Therefore, the estimated value ought to have been Tshs. 150,000,000 times 14 which is the number of the plots which amounts to Tshs. 2,100,000,000/= say Two Billion One Hundred Million

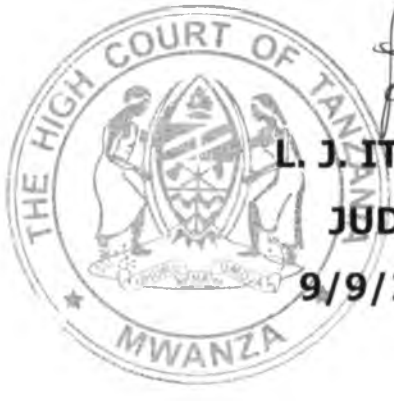
Shillings. This amount is way beyond the jurisdiction of the DLHT as provided by the law which is Tshs. 300,000,000/=

That being said, the DLHT erroneously crown itself with jurisdiction that it did not possess in entertaining the application which had properties with a value above Tshs. 300,000,000/=. On this account, without recourse to the remaining grounds of appeal, this appeal is found to have merit and is accordingly allowed. The proceedings before the DLHT are quashed and the judgement and orders emanating therefrom are set aside. I make no order as to costs.

DATED at MWANZA this 09th day of September, 2022.

**L. J. ITEMBA**
**JUDGE**

Judgement delivered under my hand and seal of the court in chambers in presence of Mr. Patrick Mhene State Attorney for the appellant, Mr. Nicholaus Majebele, advocate for the respondents, the respondents and Mr Ignas, RMA.




**L. J. ITEMBA**
**JUDGE**
**9/9/2022**