

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MWANZA**  
**AT MWANZA**

**LAND APPEAL No. 21 OF 2021**

*(Arising from the District Land and Housing Tribunal of Mwanza in Land Appeal No. 94 of 2007 Originating from Shibula Ward Tribunal in Land Application No. 02 of 2017)*

**JULIUS JOSEPH MIHAYO-----APPELLANT**

**VERSUS**

**ABEL NGELEJA-----RESPONDENT**

**JUDGMENT**

*Last Order: 10.02.2022*  
*Ruling date: 24.02.2022*

**M. MNYUKWA. J.**

This is land appeal no. 21 of 2021 where the appellant appealed against the decision of the District Land and Housing Tribunal (DLHT) of Mwanza at Mwanza. The background of this appeal is that; the appellant who is the administrator of the Estate of the deceased Judith Joseph Mihayo, once filed Land Application No. 02 of 2017 at Shibula Ward Tribunal claiming from the respondent disputed house that he believed to



be the property of the deceased Judith Joseph Mihayo. Upon hearing of the matter, Shibula Ward Tribunal awarded the appellant the disputed house for the reason that the respondent evidence could not establish his interest over the disputed house.

The respondent appealed to the DLHT of Mwanza at Mwanza vide Land Appeal No. 94 of 2017. The Appeal was heard and determined in favor of the appellant. The respondent at DLHT could not see justice and therefore decided to file this appeal before this court against the whole decision with four grounds of appeal that: -

1. That the appellate tribunal chairperson erred in law and in fact to entertain and determine the appeal without jurisdiction.
2. That the appellate chairperson erred in law and in fact for holding that the respondent and the deceased lived as husband and wife.
3. That the appellate chairperson erred in law and in fact for holding that the property in dispute is a matrimonial property while respondent failed to verify the period in which disputed property was bought.
4. That the appellate Tribunal Chairperson erred in Law and in fact for disregarding the appellant witness which was enough to determine the matter justly.



The hearing of the appeal was conducted orally whereby the appellant was represented by Mr. Baltazar Mahai, learned advocate and the respondent Mr. Abel Ngeleja appeared in person. Mr. Baltazar Mahai learned counsel for the appellant prays to adopt the grounds of appeal and argued only on the 1<sup>st</sup> and 2<sup>nd</sup> ground of appeal and abandoned the 3<sup>rd</sup> and 4<sup>th</sup> ground of appeal.

Submitting on the 1<sup>st</sup> grounds of appeal, that the appellate tribunal chairperson erred in law and in fact to entertain and determine the appeal without jurisdiction, he avers that, it is a trite law that the issue of jurisdiction needs to be considered before determination of any case. He cited the case of **Shyan Thanky & Others vs Ned Palace Hotel** (1971) EACA. He insisted that the issue of jurisdiction is the creature of statute and parties cannot give jurisdiction to the court. He also cited the case of **Fanuel Manthil Ngunda vs Herman Manthil Ngunda & 2 Others**, (1995) TLR 155 CAT where it was held that, the issue of jurisdiction is very important and it goes to the root of the case.

Referring to the court records, he avers that the disputable issue before the Ward Tribunal and the DLHT was the issue of marriage between the respondent and the deceased. He further stated, that the appellant was appointed as the administrator of the estate of the



deceased and the issue of whether the property was a matrimonial or not could be resolved after the dispute as to whether there was a marriage or not being resolved. He avers that, the DLHT has jurisdiction to decide land disputes as per section 3(1)(2) and part V of the Land Disputes Courts Act Cap. 216 RE: 2019 and that power is limited only to land issues and not marriage and inheritance. He therefore, insisted that the DLHT has no power to entertain the matter as it did. He claims that the DLHT presumed jurisdiction as seen on page 9 of the decision. He also cited the case of **Hasan Matondo vs Rose Julius** Land Appeal No. 24 of 2020 of which the facts are similar to this case at hand.

On the second ground of appeal that, the appellate chairperson erred in law and in fact for holding that the respondent and the deceased lived as husband and wife. He avers that, the appellate tribunal misdirected itself in discussing and deciding about marriage issue as it is governed by the Law of Marriage Act, Cap 29 RE: 2019. Referring to the court records, he avers that there is no evidence tendered to show that the respondent and the deceased were dully married or they attained the status of husband and wife. Referring to page 5 of the Ward Tribunal Proceedings, he claims that the respondent failed to show the year he started to cohabit with the deceased. Referring futher to pages 21 and 24



of the Ward Tribunal Proceedings, he insisted that witnesses testified before the Ward Tribunal that they did not recognize the respondent as the spouse of the deceased. He went on and claims<sup>ed</sup> that the status of the respondent and the deceased was concubinage which is reflected on page 10 of the Ward tribunal proceedings as stated by the respondent.

Citing the case of **DPP vs Bernard Njarike** [1988] TLR 18, he insisted that there are places and seasons for everything. He therefore, prays this court to allow the appeal and dismiss the decision of the DLHT and direct the matter to be determined by the court with competent jurisdiction and any other reliefs the court may think fit to grant.

The respondent who appeared in person submitted that, the DLHT was right and it has jurisdiction to determine the matter. He avers that the daughter of the deceased knew that the respondent was the spouse to the deceased though he was not living there due to the nature of his work. He insisted that the deceased was his wife and they had acquired properties together, built the house in dispute and lived together for eleven years.

In Re-joinder, the appellant reiterates his submissions in chief that the DLHT had no jurisdiction to determine the dispute based on its nature and erred to hold that the parties were dully married.

After the oral submissions by the parties, I now stand on the position to determine this appeal. The appellant learned counsel submission's first, sparks to the jurisdiction of the 1<sup>st</sup> appellate tribunal that embarked to determine the appeal from the ward tribunal on the matter that the tribunal is not clothed with jurisdiction. I agree with the appellant learned counsel that the issue of jurisdiction is vital for it is what confers the court or tribunal with powers and the same give limits.

In the case of **The Honourable Attorney General V. Reverend Christopher Mtikila, Civil Appeal No. 45 Of 2009, CAT [Unreported]**, the court gave a broad definition of what is Jurisdiction. Quoting with authority to STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES:

*"In the narrow and strict sense, the jurisdiction of validity constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issue or to the persons between whom the issue is joined or to the kind of reliefs sought or to any combination of these combinations of these factors."*



The submissions by the appellant learned counsel reflect what was transacted at a DLHT where the issue of marriage and matrimonial assets was raised by the respondent on his memorandum of appeal and the same was determined by the 1<sup>st</sup> appellate tribunal. The respondent in this appeal being a layperson, he was brief that the 1<sup>st</sup> appellate tribunal was proper. Taking into consideration that the issue of jurisdiction can be raised at any stage, I find that the appellant learned counsel was right to raise the issue of jurisdiction as he did for this court to make its findings. The same was stated in **Richard Julius Rukambura vs Issack Ntwa Mwakajila & Another** (CAT) Civil appeal No. 3 of 2004 (unreported)

*"The issue of jurisdiction is fundamental in court and can be raised at any stage, even at an appellate stage..."*

This is important as for the matter transacted before the court of law that has no jurisdiction is a nullity in whole. In the case of **Faniel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 20 others, CAT**, Civil Appeal No. 8/1995 (unreported) which is also cited by the appellant learned counsel, it was held that: -

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature...The question of jurisdiction is so*





*fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial...it is risky and unsafe for the court to proceed with the trial on a case on the assumption that the court has jurisdiction to adjudicate upon the case..."*

*See also* **Consolidated Holding Corporation Ltd v. Rajani Industries Ltd and Bank of Tanzania**, Civil Appeal No. 2 of 2003, CAT (unreported)

I have had the time to go through the records of both the trial Ward Tribunal and the first appellate tribunal. Before embarking on the issue as to whether the 1<sup>st</sup> appellate tribunal determined the matter without being clothed with jurisdiction, I will briefly go to the genesis of the matter.

It goes that, the appellant who is the brother to the deceased filed a probate case before Mkuyuni Primary Court over the Estate of the deceased one Judith Joseph Mihayo. In the process, the respondent filed an objection which was determined by the court and the appellant was appointed as the administrator of the Estate of the deceased. In the process of administration, records show that the administrator identified the house in dispute as deceased's property. And further, he distributed





the disputed house to one Rose Adam as the surviving daughter of the deceased by 50% and 40% to the respondent as they recognized him for being in a concubinage relation with the deceased.

When the administrator of the estate filed the inventory before the court, the respondent objected claiming that the house which was to be distributed among them was his own property and not the property of the deceased for he claims to having refunded the surviving daughter of the deceased amount to the tune of Tsh. 300,000/= as her share of the house.

It was from this point whereby Mkuyuni Primary Court ordered the parties to file an application before the Ward Tribunal in order to determine the dispute as to who was the rightful owner of the property in dispute. The appellant filed before the Shibula Ward Tribunal an application No. 02 of 2017 for the Ward Tribunal to determine who was the rightful owner of the disputed house. Upon hearing, the respondent lost and appealed to Mwanza DLHT in Land Appeal No. 94 of 2017. From the memorandum of appeal consisting of 4 grounds of appeal, he raised issues that the Ward Tribunal erred for not considering that the respondent and the appellant were husband and wife and the house in dispute was a matrimonial house which on the process, he had already



compensated the deceased's daughter one Rose Adam and that the house solely belongs to him.

The DLHT determined the appeal and in the process, proceeded to determine whether the respondent and the deceased were husband and wife and ruled out in favor of the respondent in that instance and that the house was as well as a matrimonial house. It is from this point that the appellant is before this court.

The records of the DLHT are clear that on page 08 of the judgment, the trial chairperson warned himself that the matter raised before the trial tribunal was a matrimonial issue and proceeded to acknowledge quoting section 76 of the Law of Marriage Act Cap 29 R.E 2019 that, the jurisdiction is vested to the High Court, Resident Magistrate Courts, District Courts and the Primary Courts. From this point, he went on as I quote

*"sina maana kwamba baraza hili kutokuwa kwenye orodha ya mahakama zenye mamlaka haliwezi kutatua migogoro wenye sifa za ndoa au la, nitakuwa najidanganya mwenyewe..."*

In fact, the chairman was aware that he was dealing with a matrimonial issue, but directing himself that the issue was within his mandate was a fatal error. According to section 31(1) and (2) of the Land



Dispute Courts Act, Cap 216 R.E 2019, Land tribunal jurisdiction is vested on land matters only. The law reads: -

*"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, (Enfranchised) Act, the Rent Restriction Act, and the Regulation of Land Tenure (Established Villages Act) Act, and*

*(b) in all such 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.*

For that reason, the law did not confer jurisdiction to the DLHT to try a matrimonial issue and the chairperson, therefore, committed a material error.

But before I wind up, I find it prudent to remark on the procedure that was duly for the determination of the matter. Going to the genesis of the matter, it is clear that there is still a probate case before Mkuyuni Primary Court in which the distribution of the estate of the deceased sparks this matter. In that regard it was wrong for Mkuyuni Primary Court to direct parties to have their issue resolved by the Ward Tribunal rather, the Probate Court was placed with a position to determine the matter. In



**Mgeni Seif V. Mohamed Yahya Khalfani**, Civil Appeal No. 1 of 2009

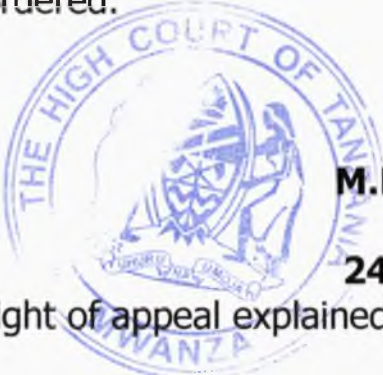
(CAT) at Dar es Salaam Registry, it was held, thus;

*"When there is a dispute over the estate of the deceased, only the probate and administration Court seized of the matter can decide on the ownership. "*

It is in this regard I find that neither the Ward Tribunal nor the District Land and Housing Tribunal was vested with jurisdiction to determine the matter. The appeal, therefore, has merit and the proceedings, Judgment and orders of both the Ward Tribunal and the DLHT are a nullity. I proceed under section 43(1)(b) of the Land Dispute Courts Act Cap 216 to nullify, and set aside judgment and orders from the Ward Tribunal and the DLHT.

This court directs Mkuyuni Primary Court to hear the parties and determine the issue of ownership of disputed house and conclude the pending Probate Cause in accordance with the law applicable as soon as practicable and in any case within not more than four (4) months of this judgment. The parties shall bear their own costs.

It is so ordered.

 **M.MNYUKWA**  
**JUDGE**  
**24/02/2022**

Court: Right of appeal explained to the parties



**M.MNYUKWA  
JUDGE  
24/02/2022**

Judgement delivered in the presence of the appellant's advocate and in  
the presence of the respondent in person



**M.MNYUKWA  
JUDGE  
24/02/2022**