

IN THE COURT OF APPEAL OF TANZANIA

AT MTWARA

DRAM: MBAROUK, J.A., BWANA, J.A. AND MASSATI, J.A.)

CONSOLIDATED CIVIL REVISIONS NO. 2,3,4,5&6 OF 2010

|                                 |   |                  |
|---------------------------------|---|------------------|
| 1. OLAM TANZANIA LIMITED        | } | ..... APPELLANTS |
| 2. PROPERTY INTERNATIONAL       |   |                  |
| 3. NATIONAL HOUSING CORPORATION |   |                  |
| 4. FARAJI RUKWANJA              |   |                  |
| VERSUS                          |   |                  |

|                              |   |                   |
|------------------------------|---|-------------------|
| 1. SELEMAN S. SELEMANI       | } | ..... RESPONDENTS |
| 2. BARAKA NKONDOLA           |   |                   |
| 3. CHIHAKO M. SAID           |   |                   |
| 4. JOSEPH MPANDA             |   |                   |
| 5. T.E.D. LINDI TOWN COUNCIL |   |                   |

(Revision from the Judgment of the High Court of Tanzania  
(Land Division at Mtwara)

(Chinguwile, J.)

dated the 25<sup>th</sup> day of September, 2009  
in  
Land Case Appeal No. 15 of 2009  
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RULING OF THE COURT

6 & 12 OCTOBER, 2010

MASSATI, J.A.:

This ruling arises from the order of His Lordship, the Chief Justice calling for revision, of the decisions of the High Court, Land

Division (Chinguwile, J.) dated 25<sup>th</sup> September, 2009 in Land Case Appeals No. 7, 14,15, 16 and 17 of 2009 originating from Mtwara and Lindi District Land and Housing Tribunals. Since they all touch on the issue of jurisdiction of the said tribunals it was further ordered that they be consolidated and determined together.

A brief background for each of the applications would be aposite. In Civil Revision No 2/2010, (**OLAM TANZANIA LIMITED AND PROPERTY INTERNATIONAL v SELEMAN S. SELEMAN**) the Respondent had brought an action for a declaration that the mortgage transaction between the 1<sup>st</sup> and 3<sup>rd</sup> Respondents was unlawful, and for an injunction to restrain the 2<sup>nd</sup> Respondent from selling the mortgaged property. The value of the property was put at Tshs.3,000,000/=. In Civil Revision No 3/2010 the prayers are the same, the respondents were the same, but the value of the property is put at shs.5,000,000/=. In Civil Revision No. 4/2010, the Applicant **CHIHAKO SAIDI** had sued the National Housing Corporation for breach of a lease agreement and loss of business. The value of the property is Tshs.5,000,000/=. Civil Revision No 5 of 2010 is similar

to Civil Revisions Nos. 2 and 3, in the reliefs sought, but this time the Applicant was Joseph Mpanda and the value of the property is put at 2,500,000/=. Lastly, in Civil Revision No. 6/2010 the applicant before the Lindi District Land and Housing Tribunal was FARAJI A. RUKWANJA. He had instituted a suit against Lindi Town Council for the recovery of a plot of land. One may therefore, conveniently classify the cases into three categories. The first category relates to those relating to mortgage transactions, (the "OLAM cases) the second category is the landlord/tenant relationship (the National Housing Corporation Case) and the last one relates to plot allocation (the plot allocation case).

At the hearing of this application, the first Applicant was absent, the second Applicant was represented by Mr. Linus Macha, who described himself as a Court Broker; the third Applicant was represented by Mr. Lazaro Maramoko, learned Counsel, and the Fourth Applicant, Mr. Faraji Rukwanja, appeared in person. On the other hand, all the Respondents, except the second and the fifth, were present in Court, but of those who were absent the second

Respondent was not duly served but the first Respondent was served.

When the Applicants who were present (except the third one) were given an opportunity to be heard, they decided to leave it to the Court; understandably so, because they are laymen and before us is a question of law. On the other hand, Mr. Maramoko, learned counsel, submitted in full support of the decision of the High Court. His view was that under section 37(1)(b) of the Land Disputes Courts Act, 2002, all land disputes against the specified corporations were justiciable only in the Land Division of the High Court unless there, was no land court registry in the area in question. Since the National Housing Corporation was a specified corporation, by virtue of GN 41 of 1992, and since by GN 301 of 2003 a land court registry was established at all the High Court registries, including Mtwara; the District Land and Housing Tribunal had no jurisdiction to hear and determine that particular matter.

We find it convenient to begin with the National Housing Corporation case. The point should not detain us for long. This point

of jurisdiction was first raised at the trial tribunal. The tribunal agreed that the National Housing Corporation was a Specified Corporation, but construed section 37(2) of the Land Disputes Courts Act as amended by Written Laws ((Miscellaneous Amendments) (No 2) Act 2005 to mean that, for a land registry to be operational, it must be established as a fully independent registry in a separate building, and concluded that since there was no separate land court registry office it was not operational in Mtwara, and so the tribunal was still clothed with jurisdiction. With that reasoning the tribunal dismissed the preliminary objection. On appeal, Chinguwile, J. found that there was in law a land court registry, within the High Court of Tanzania, Mtwara Registry since 2003, which is operational to date. Therefore, the Tribunal had no jurisdiction to hear the dispute against the National Housing Corporation, by virtue of section 37(1)(d), of the Land Disputes Courts Act (Cap. 216 – R.E. 2002). So the appeal was upheld.

It is not controverted that under section 37(1)(d), of the Land Disputes Courts Act. (Cap 216 – R.E. 2002) only the High Court

(Land Division) has original jurisdiction in all proceedings involving public corporations specified in the Rent Restriction (Exemption) (Specified Parastatals) Order 1992 GN 41 of 1992 and that the National Housing Corporation is one such specified corporation. It is also not disputed that section 37(2) of the Land Disputes Courts Act was amended by the Written Laws (Miscellaneous Amendments) No 2 of 2009 to allow the district land and housing tribunal in any given area to exercise jurisdiction to determine a dispute involving a specified public corporation under subsection (d) if the Land Division of the High Court is not operational within the area. What was disputed was whether for such land registry to be operational there ought to be a separate building from that of the ordinary High Court registry, in the particular area?

We have looked at GN 301 of 2003 (The High Court Registries (Amendments) Rules, 2003. Rule 5 M provides:-

*"There shall be a sub registry of the Land Division of the High Court at every High Court centre."*

These rules were published on 19/9/2003. According to section 37(1)(b) of the Interpretation of Laws Act (Cap 1 – R.E. 2002), those rules came into operation on 19/9/2003. To our understanding, given a purposive interpretation, the phrase "*High Court centre*" means every District registry, established from time to time under the High Court Registries Rules made under the Judicature and Application of Laws Act (Cap. 358 – R.E. 2002) as amended from time to time. Perhaps one may pause here and wonder whether the amendment to section 37(2) of the Land Disputes Act by Act 21/2009 had any relevance to the present dispute in view of GN 301 of 2003. Be that as it may, under those rules, Mtwara was established to cater for Mtwara and Lindi Regions. We are therefore, satisfied that when the Respondent instituted his application against the National Housing Corporation on 20<sup>th</sup> November, 2008 the sub registry of the Land Division of the High Court was already operationalised in Mtwara. This effectively ousted the jurisdiction of the District Land and Housing Tribunal in the dispute. To that extent we agree with the learned appellate judge.

In the plot allocation dispute the Respondent there had taken out several preliminary objections alleging violations of rules relating to institution of the proceedings, including, limitation. After hearing the parties by way of written submissions, the trial tribunal dismissed the application on the ground that it was time barred. The Applicant appealed. The learned appellate judge disposed of the appeal on the basis of jurisdiction. She said:-

*"... In my view, District Tribunals do not have jurisdiction over registered land under any written law. This is in accordance with section 37(1)(e) (of the Land Disputes Courts) Act)."*

The learned judge referred to sections 3(1) and 33(2) of the Land Disputes Courts Act and sections 167 of the Land Act, 1999, section 62 of the Village Land Act and lastly the Written Laws (Miscellaneous Amendment) Act, 2003, and GN 225 of 2003.

At this juncture we shall also review the OLAM cases, to which we note that the learned judge used the same reasoning to arrive at the same conclusion. What is peculiar in all the 3 OLAM cases is that the original Respondents (now Applicants) are the same; they never either appeared in court or filed their defences, and the cases against them proceeded exparte. The Applicants then filed appeals against the exparte judgments. As hinted above, on the basis of section 33 of the Land Disputes Courts Act, and the Land Registration Act, the learned judge concluded that since the properties were registered land, the District Land and Housing Tribunal had no jurisdiction.

And so, all the judgments in the OLAM cases and the plot dispute case were quashed, and the consequential orders set aside. We now turn to examine whether those decisions were correct in law.

We wish to start by defining what is jurisdiction? According to **STROUD'S JUDICIAL DICTIONARY OF WORDS AND PHRASES**

*"In the narrow and strict sense the jurisdiction of a 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.*

- 1) to the subject matter of the issue or*
- 2) to the persons between whom the issue is joined*
- 3) to the kind of relies sought*  
*or to any combination of these factors."*

It is also a general principle of statutory construction that:-

*"provisions excluding jurisdiction of civil court and provisions conferring jurisdiction on authorities and tribunals other than civil courts are to be strictly construed, and that  
..... When with the object of speedy adjudication of certain matters which are widely defined, jurisdiction is conferred on tribunals or special courts and jurisdiction of normal courts is excluded, the wide language used cannot be normally construed and it is now a well established principle that the*

*jurisdiction of a court created specially for reduction of disputes of certain kinds should be construed liberally."*

**PRINCIPLES OF STATUTORY INTERPRETATION** 9<sup>th</sup> ed, 2004 by Justice G.P SINGH) pp 630 and 652.

We have no doubt in our minds that the land tribunals were specially created for among others, the purpose of a speedy adjudication of land disputes, to the exclusion of the ordinary courts created under the Magistrates' Courts Acts (Cap. 11 R.E. 2002). So we shall tread carefully while reviewing the statutes conferring jurisdiction on the said tribunals.

As shown, above the learned judge determined the OLAM and the plot allocation appeals by reference to the Land Act (Cap. 113 – R.E. 2002) the Village Land Act (Cap. .... R.E. 2002) the Land Disputes Court Act (Cap 216 – R.E. 2002), the Land Registration Act (Cap. 334 – R.E. 2002). The Written Laws (Miscellaneous

Amendments) Act 2003, and GN 225 of 2003. Let us now examine those statutes.

The Land Act establishes what the statute refers to as the "land courts." Section 167(1) creates among others, the High Court Land Division, and the District Land and Housing Tribunals. Section 62 of the Village Land Act allows disputes from Village Councils to courts established under section 167(1) of the Land Act. GN 225 of 2003 made rectifications of errors in several statutes including the Land Act, the Village Act and the Land Disputes Courts Act. But the rectifications have no direct bearing to the present application.

The most important legislation for the purposes of this revision is the Land Disputes Courts Acts. This statute creates and defines the jurisdiction of the Land Division of the High Court and the District Land and Housing Tribunals. Section 22 of this Act empowers the Minister to establish district land and housing tribunals Section 22(2) vests the tribunals with their general territorial jurisdiction. The original jurisdiction and powers of the tribunals are created in section

33(1) and (2) of the Act. Due to its significance, it is worth quoting it at length:-

*"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, 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.*

*(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 fifty million shillings, and*

*(b) in other proceedings where the subject matter is capable of being estimated at a*

*money value if the subject matter does not exceed forty million shillings."*

(3) (In applicable)

The original jurisdiction of the High Court (Land Division) is created in section 37. It has paragraphs (a) to (e). For the purposes of this revision, we shall quote those paragraphs referred to by the learned judge in her several judgments which are paragraphs (c) and (e)

*"(c) in all proceedings under the Tanzania Investment Centre Act 1997, the Land Act, 1999 and the Land Acquisition Act, 1967 in respect of proceedings involving the Government.*

*(e) in all such other proceedings relating to land under any other written law in which jurisdiction is not limited to any particular court or tribunal."*

The last statute referred to by the learned judge is the Land Registration Act. But we do not know which provision of that statute, the learned judge had in mind, and did not clarify which of the

proceedings before her on appeal were proceedings relating to land under the Land Registration Act. We are aware that under that Act the decisions of the Registrar of Titles are appealable to the High Court under sections 101 and 102. In the present cases, certainly, none of them arises from the decisions of the Registrar of Titles under the Land Registration Act.

In all the OLAM cases for instance, the subject matters in dispute were landed properties alleged to have been mortgaged to the Applicant herein, (OLAM). The houses were on the brink of being auctioned. The respondents rushed to the tribunal to get a declaration and an injunction. Now under part X of the Land Act (Cap. 113 – R.E. 2002) a borrower has a right to go to a court to seek a remedy. Under section 140 of the Act the "Court" has certain powers in respect of remedies and reliefs arising from a mortgage. Under section 2, the word "*court*" is defined to mean "*any body or authority established under section 167 of the Act.*" As seen above section 167(1)(c) of the Land Act, establishes the District Land and Housing Tribunals as one of the "courts".

So with respect, if by "registered land" the learned judge was referring to the mortgaged land, the District Land and Housing Tribunal had jurisdiction to handle mortgages (subject to its pecuniary limits), and that is the kind of dispute that falls squarely within section 33(1)(a) of the Land Disputes Act because it is a dispute under the Land Act. And since we do not see how else the learned judge brought up the application of the Land Registration Act (Cap. 334 – R.E. 2002) in the scene and since none of the provisions of the statutes she cited specifically bars District Land and Housing Tribunals from taking cognizance of disputes over registered land, and since the subject matter in the present application are disputes under the Land Act, we think the learned judge misapplied those provisions and came to the wrong conclusions.

Similarly, in our view the dispute over the plot in Lindi is also covered under the Land Act. By definition, a land dispute is defined in the Land Disputes Courts Act (section 2 ) to mean:-

*"any case where a person complains of and is aggrieved by the actions of another person ..... or is a complaint against an official."*

In that case, the Applicant was complaining against Lindi Town Council for revoking his letter of offer over his plot. Certainly this is a land dispute under the Land Act, and has nothing to do with the Land Registration Act. We are aware that under section 37(1)(c) of the Land Disputes Act, land disputes involving the Government are within the exclusive jurisdiction of the Land Division of the High Court. But the term "*Government*" which is not defined in the Act, is defined in the Interpretation of Laws Act to mean "*the Government of the United Republic*" as opposed to "*a local government authority*" which is also defined therein. The dispute in the present case is against Lindi Town Council, a local government authority, and not the Government.

We are therefore, settled in our minds that subject to territorial and pecuniary limits and the restrictions imposed by section 37(1) of the Land Disputes Courts Act, District Land and Housing Tribunals have jurisdiction to hear and determine all land disputes arising under the Land Act, regardless of whether the said land is registered or not.

Having said so, we now invoke our powers under section 4(3) of the Appellate Jurisdiction Act (Cap. 143 R.E.) and revise all the decisions of the High Court in Land Case Appeals Nos. 7, 14, 15 and 16 of 2009, and quash the respective judgments. We order that these appeals be remitted to the High Court and another judge be appointed to determine them on merit. On the other hand, we cannot fault the learned judge in her judgment in Land Case Appeal No. 17 of 2009. That judgment is sustained. We make no order as to costs.

DATED at MTWARA, this 11<sup>th</sup> October, 2010.

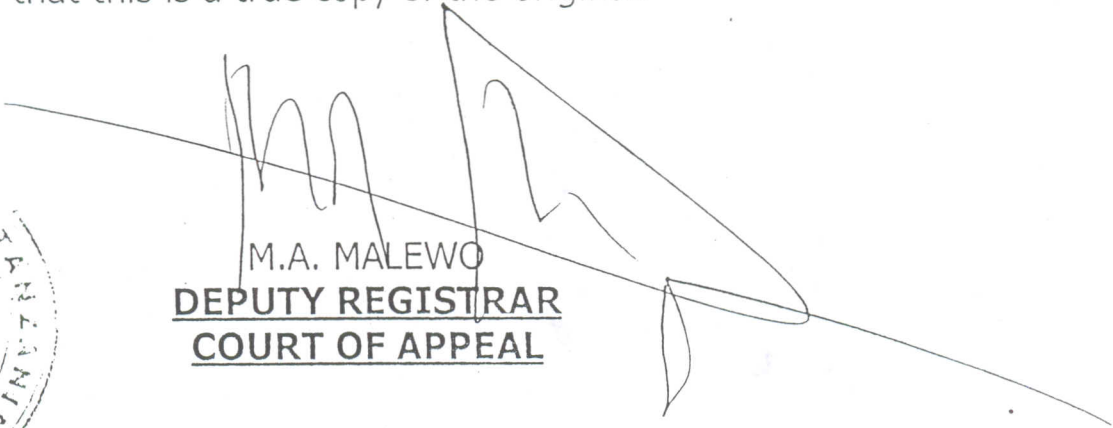
M.S. MBAROUK  
**JUSTICE OF APPEAL**

S.J. BWANA  
**JUSTICE OF APPEAL**

S.A. MASSATI  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



  
M.A. MALEWO  
DEPUTY REGISTRAR  
COURT OF APPEAL