

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT MWANZA

MISC. LAND APPEAL NO. 41 OF 2007

(From the Decision of the District Land and Housing Tribunal of MWANZA Region at MWANZA in Land Case Appeal No. 27 of 2007 and original Ward Tribunal of Kharumwa in Application No. 2 of 2006.)

**SYLIVESTER FAUSTINE APPELLANT
VERSUS
MIHAYO LUGAILA RESPONDENT**

J U D G M E N T

A.F. Ngwala, J.

This is a second appeal by the appellants. The Respondent had successfully sued the Appellant in the Kharumwa Ward Tribunal for trespass. The appellant appealed to the District Land and Housing Tribunal where he lost the appeals.

The background of this matter is that the Respondent was allocated land in 2000 by Village authorities. On 06/01/2006 the Appellant was allocated the same Plot, on which the Respondent had built a foundation.

The trial Ward Tribunal nullified the allocation of the disputed plot to the Appellant on the ground that the allocation was done by an unauthorized committee. On appeal the District Land and Housing Tribunal chairperson affirmed the decision of the Ward Tribunal, stating that the appellant was allocated the disputed plot

by two members of Village land allocating committee acting under the notice issued by the WARD Secretary (*Katibu Kata*).

After perusing the records of the trial Tribunal and the first appellate Tribunal, I am satisfied that the Respondent was lawful allocated the land in 2000. He developed the plot by constructing a foundation. I also agree with the lower Tribunal's holding that the Appellant was illegally allocated the suit premises. The committee, presided by two members was not vested with powers to allocate the Village land. Allocation of the Village Land must be done by the Village Land Council, duly established by the Village Council and approved by the Village Assembly. This is provided for under Section 60 of the Village Land Act 1999 [Cap. 114 R.E. 2002].

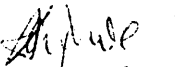
The Village Land Council shall consist of not less than five persons. In the circumstances the allocation conducted on 06/01/2006 was not lawful. Allocation of Village Land is done pursuant to the provisions of Sections 51 to 57 of the Village Land Act. The Court of Appeal of Tanzania in *Kiteto District Council Vs. Tito Shumo & 49 Others*, Civil Appeal No. 58 of 2010 held as follows with regard to allocation of Village Land:-

"We have already held that the Respondents had not applied for land or obtained land from any Village authority in compliance with the provisions of Sections 51 to 57 of the Village Land Act, 1999. Had they done so, they would have been lawfully allocated land and enjoyed

quiet possession of the Land lawfully allocated to them by the appropriate Village authorities within Kiteto District. The evidence on record speaks for itself. The Respondents were apparently allocated land by Maasai herders not the appropriate Village authorities”

In the upshot, I see no reason to disturb the decisions of the lower Tribunals. I also take the opinion of wise assessors of the this Court who have said that the land in dispute was illegally allocated to the Appellant. I uphold the decisions of the 1st appellate and trial Tribunal. The Respondent is still a rightful owner of the suit Plot. Costs are awarded to the Respondent.

Consequently the Appeal is dismissed with costs.


A.F. Ngwala,
JUDGE
01/03/2012.

01/03/2012.

Coram : A.F. Ngwala,J.

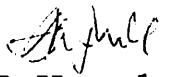
Appellant : Absent

Respondent : Absent

B/c: L. Mtaki.

Court: Judgment to be delivered by the Hon. Registrar of Mwanza.

Court: Parties to be notified.


A.F. Ngwala,
JUDGE
01/03/2012.