

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT MWANZA

LAND APPEAL NO. 21 OF 2008

(From the Decision of the District Land and Housing Tribunal of Tarime
at Tarime in Application No. 30 of 2008)

MARANDI CHACHA MARANDI APPELLANT

VERSUS

MAMBA CHACHA KEMBAKI 1ST RESPONDENT

RYOBA MAMBA CHACHA 2ND RESPONDENT

JUDGMENT


MWAMBEGELE, J.:

This is an appeal from the decision of the District Land and Housing Tribunal of Tarime (hereinafter the Tribunal) in which Marandi Chacha Marandi; the Appellant sued Mamba Chacha Kembaki and Ryoba Mamba Chacha; the Respondents for trespass into the disputed parcel of land measuring approximately eight acres. The Tribunal decided in favour of the Respondents and consequently dismissed the Appellant's application. Dissatisfied, the Appellant has appealed to this court filing seven grounds of appeal challenging the decision of the Tribunal.



Both Respondents are no more. One Magibo Mamba was appointed administrator of the estates of both Respondents. The letters of administration have been filed in this court. When this matter came up for hearing before me on 19.10.2012, only the Appellant appeared. There was no proof of service to the said Magibo Mamba; administrator of the estates of both deceased Respondents. I adjourned the matter to 29.10.2012 during which, again, he did not appear. It was said he refused service. Indeed there was proof that he had refused service. The Court Process Server had sworn an affidavit to that effect. In the premises, I granted the Appellant's prayer to argue the appeal *ex parte*. In arguing the appeal, the Appellant prayed to rely on the grounds of the appeal he filed. He just prayed to the court to peruse the record adequately and grant his appeal.

The ground upon which the Tribunal allowed the Respondents' case is the fact that both the Appellant and Respondents were allocated land by the Village Land Allocation Committee. The Respondents, after long customary occupation, were allocated the disputed land in 1993 while the Appellant was

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allocated the same in 2001. The Tribunal therefore held that the allocation of the disputed land to the Appellant had no legal effect.

I have perused the record in its entirety. The Testimony of the first Respondent at the trial is very clear that he has been using the disputed land since 1959 and that in 1993 he was officially allocated the disputed land and that he has been in an uninterrupted use of the same. He was supported by the testimony of Ryoba Mamba Chacha DW2; his son who was born in the disputed land in 1961 and Marwa Nyamagaka DW3 who was given part of the disputed land to cultivate temporarily and Lucas Nkaina DW4 who was Secretary to the village committee that formally allocated the disputed land to the first Respondent.

On the other hand the appellant testified that he was allocated the disputed land on 08.03.2001. He claimed the disputed land was vacant and that in 2006 the Respondents trespassed into his land.

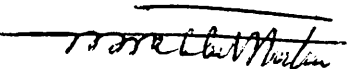
As to who between the Appellant and first Respondent was allocated land first, the evidence at the trial was loud and clear. The Appellant was allocated the disputed land on 08.03.2001 while the first Respondent, who has been in an

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uninterrupted occupation of the same since 1959, was formally allocated, as per the testimony of DW4, on 05.03.1993. In view of this, I find that the first Respondent has a better title than the Appellant. I am satisfied that the Tribunal was correct to reach the conclusion it arrived at. The decision of the Tribunal is hereby endorsed. This appeal was preferred with no scintilla of merit. It must fail.

This appeal is dismissed. As the Respondents, through the administrator of their estates, did not defend this appeal, I make no order as to costs.

DATED at MWANZA this 5th day of November, 2012.


J. C. M. MWAMBEGELE

JUDGE