

IN THE HIGH COURT OF TANZANIA
AT ARUSHA
CRIMINAL APPEAL NO. 27 OF 2014
(C/F CRIMINAL APPEAL NO 32/2014 MBULU DISTRICT COURT
ORG. CRIMINAL CASE NO. 70/2014)
YESAYA HILKU.....APPELLANT
VERSUS
PAULO LEONARD AND ANOTHER.....RESPONDENTS

JUDGMENT

S.M. MAGHIMBI, J.

This is a second appeal. The appellant herein above was dissatisfied with the decision of Mbulu District Court which reversed the decision of Dongobesh Primary court which convicted and sentenced the respondents to pay a fine of Tshs. 50000/= each and in default to serve one year in prison, and also each to pay a compensation of Tshs 208,000/= to the complainant.

The hearing of appeal proceeded orally whereby both parties appeared in persons i.e. were not represented. Arguing the appeal the appellant submitted that they appeared before the Mbulu District Land Tribunal, their case was heard and also visited the disputed land. The decision came in his

favour in 2000 and the land was handed to him in 2004. He set boundary marks, until 2010 when the dispute arises by the respondents invading his farm. He submitted further that he filed a case in court and was directed to go to the District Court. Katibu tarafa came and held a meeting with the village government and the area was identified. Then the matter was taken to the district court and the magistrate told him to open a criminal trespass case because the judgment which was decided in his favour was never appealed against. Then he opened a criminal case and the Primary Court visited the disputed land. Upon reaching there the boundaries were shown and the court decided that the respondents father was fined to pay 60,000/-.

The appellant contended further that in 2014 the respondents invaded his farm and reported to the Primary Court. The case was decided in his favour basing the previous facts that he had a case with their father. They were sentenced to pay fine of 50,000/- each or an alternative of one year imprisonment. They then successfully appealed at the District Court which decided that Mbulu District Tribunal has no jurisdiction. The magistrate had a good knowledge of the fact that he was declared the owner in 2000 and has convicted another relative of the respondents upon trespassing in the same farm. The same magistrate has also acquitted him in appeal on the same disputed land. His contention is that was the Mbulu Land Tribunal erroneously constituted? Is that judgment nullified? The magistrate erred in saying the tribunal had no jurisdiction.

Lastly he prayed this honourable court to quash and set aside the judgment of the district court in criminal appeal no. 32/2014 and he be left

with peaceful enjoyment of his land and to be compensated as ordered by primary court.

The 1st respondent in reply submitted that they (respondents) are from the same family and were erroneously convicted at Dongobesh Primary Court. They appealed to Mbulu District Court and were acquitted because the land in dispute is not the property of the appellant but it is their father's land which he was lawfully allocated after successfully winning at Babati District Land and Housing Tribunal in Application No 49/2007. As a family they started activities since then and the appellant herein did not appeal against that case. Until now they continue using the land. They prayed this honourable court go through the records and their exhibits so as to determine who the lawful owner of the disputed land is. They also prayed this court to dismiss the appeal.

2nd respondent in his regard submitted that it is not true that the land in dispute belongs to the applicant as there is a decision in their favour in case no 49/2007 and the execution of the decree has already been effected on 04/04/2008 and the appellant was to be given 5 acres and their father to get the remaining 9 acres. On 29/09/2010 they were handed over the land. No appeal was preferred. They therefore submit that the Primary Court had erred by not recognizing the ownership of their father and ignored the land case and saying that their father erred in filing a case at Babati Tribunal. There is evidence of the execution map and what they are possessing is the side that belongs to our father. The District Court considered the last case that determined the land dispute between the appellant and their father. He prayed the appeal to be dismissed.

3rd respondent also submitted that he also agreed with the district court decision as it was in line with the Babati District Land and Housing Tribunal that their father is the lawful owner of the disputed land.

Having gone through the available evidence on record of both lower courts and the submission for and against by both parties, it is the finding of this court that the decision of the lower courts is based on the exhibits EX "A" U and exhibit EX "C" M being the decision of the District land and Housing Tribunal of Manyara and the decision of the land Mediation Tribunal (Baraza la Usuluhishi wa Ardhi) respectively. It is a trite law in criminal cases of this nature, where the parties are disputing over the land, the court is duty bound to ascertain the lawful owner of the land in dispute before determining the criminal case on merit. It should be noted that every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area. The Courts of jurisdiction include the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court (Land Division) and the Court of Appeal of Tanzania.

The appellant accused the respondents in the Primary Court of Dongobesh to have entered the land which is lawfully his and destroyed the grasses therein. The appellant tendered in the trial court exhibit EX "C" M being the decision of the land Mediation Tribunal (Baraza la Usuluhishi wa Ardhi) to prove his ownership. The respondents as well claimed ownership of the same land through exhibit EX "A" U being the decision of the District land and Housing Tribunal of Manyara. Baraza la Usuluhishi wa ardhi mkoa wa

Arusha wilaya ya Mbulu as it appears in exhibit EX "C" M is not among the courts with jurisdiction to try land disputes. Thus any decision delivered by it cannot in any manner bind the courts. In simple terms the decision of Baraza la Usuluhishi wa ardhi mkoa wa Arusha wilaya ya Mbulu which declared appellant the lawful owner of the disputed land subject to this case is void since it was determined without having jurisdiction to do same. That being the case the decision of the District land and Housing Tribunal of Manyara which decided the appellant to have five acres and the remaining land to belong to the respondents is the genuine and the same is useful in our appeal to determine whether the appeal has merit or not.

I totally agree with the first appellate court that the trial magistrate ought to consider the decision of the District land and Housing Tribunal of Manyara as proper proof of ownership. Therefore the respondents were not properly convicted in the trial court owing the circumstances at hand.

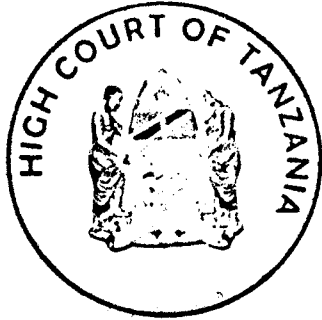
I hereby uphold the decision of the first appellate court and dismiss the appeal in its entirety.

Appeal Dismissed.

Dated at Arusha this 09th day of October, 2015

**SGD
S. M. MAGHIMBI
JUDGE**

I hereby certify this to be a true copy of the original.




Deputy Registrar
High Court
Arusha

