

“ORIGINAL”

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

**LAND APPEAL NO. 46 OF 2016
(Appeal from the District Land and Housing Tribunal of KONDOA
Land Appeal No. 37 of 2014
Original from CHEMBA Ward Tribunal)**

RAMADHANI MWINYI GARU.. APPELLANT

VERSUS

SABAI KANJA..... RESPONDENT

JUDGEMENT

Date of JUDGEMENT- 16/06/2017

Mansoor, J:

The dispute was resolved at the Chemba Ward Tribunal where both parties were allocated half of the land in dispute. The Appellant was aggrieved and filed an appeal before the District Land and Housing Tribunal of Kondoa.



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The Appellant claims that the Respondent had trespassed into his land. He claimed that he cleared the land in 2010, it was a bush. The total land in dispute is 8 acres. That in 2014 the respondent started claiming that this is his land, that the respondent was threatening him with lethal weapons and he filed a case at the Paranga Primary Court. The respondent on the other hand claims that the land belongs to him, as he inherited it from his father since 1974. That his father died in 1998 but he continued using the land until 2004, when he decided to stop using the land so that to let the land regain its fertility. The Chemba Ward Tribunal decided that, and I quote:

“.....kwa upende wa mlalamikaji , mashahidi wake wametofautiana. Mlalamikaji amesema eneo ni lake. Mashahidi wamesema ni la baba yake sabai (mzee Kanja) kwa maelezo haya mlalamikaji kasema kakuta pori akatengeneza shamba mwaka 2010 na hakuona mtu amemshtaki bali aliona mtu anamzuia kulima kuanzia mwaka 2013 na kumtishia maisha (kumuua)”



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However, the trial Tribunal visited the locus in quo and found that Sabai had abandoned the land for more than 10 years, and that as per the Land Regulations the ownership of the land reverted back to the Village Council. On the other hand, the Ward tribunal found that the Appellant took the law into his own hands by allocating the abandoned land to himself without following the village land allocation procedures. Therefore the Ward Tribunal decided to allocate the land to both parties. Half of the disputed land was allocated to the Appellant and half of it was allocated to the respondent.

There is evidence of long and unexplained non-use of the land by the respondent and this is admissible as to intent of abandonment of land. Even if it was established that, that the Respondent had rightful acquired this land through his father, the Land title is lost by abandonment. The Land Act and the Village Land Act give the power to the Village Council to repossess the land for reasons of abandonment or non-development of the land for a certain period of time. It has been established that the appellant has been in possession of



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this land from 2010 and he had cleared the land in 2010 and have been in occupation and use of this land since then, but as held by the Ward Tribunal the appellant took the law into his own hands, he should have applied for allocation of this land before the Village Council.

Again, this is a suit relating to the ownership of land held under native tenure and the members of the Ward Tribunal had exclusive knowledge of the history of ownership of this land, and the members of the Ward Tribunal were satisfied that the land belonged to the Respondent but he abandoned it. Unless the contrary is shown, the decisions of the Ward Tribunal on this matter which is peculiarly within the knowledge of the members of the Ward Tribunal, arrived at after a fair hearing on relevant evidence, the District Land and Housing Tribunal was not correct to disturb that decision of the Ward Tribunal without very clear proof that the Members of the Ward Tribunal were wrong.



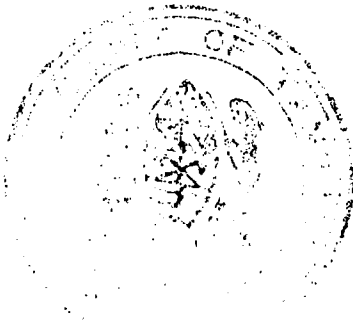
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Based on the above, this appeal is allowed and the proceedings and judgement of the District Land and Housing Tribunal of Kondoa in Land Appeal No. 37 of 2014 are quashed and set aside, and the Judgement of the Chemba Ward Tribunal are upheld and confirmed.

Appeal allowed with no orders as to costs.

It is so ordered

DATED at DODOMA this 16TH day of JUNE, 2017




L. MANSOOR

JUDGE,

16TH JUNE 2017