

**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**(APPELLATE JURISDICTION)**

**MISC. LAND CASE APPEAL NO. 85 OF 2016**

*(From the Decision of the District Land and Housing Tribunal of Singida District at Singida in Land Case Application No. 103 of 2015 Original Land Case No. 7 of 2015 of the Ward Tribunal of Sepuka)*

**JUMA SALUM KIBWANA..... APPELLANT**

**VERSUS**

**RAMADHANI MUSSA.....RESPONDENT**

**JUDGMENT**

**12/6 & 31/7/2017**

**KWARIKO, J.**

Before the Ward Tribunal of Sepuka the appellant herein successfully sued the respondent herein over farm land where he said he had been using since 1998 and planted permanent trees thereon. The appellant also claimed that in 2015 he started to build a house on that land when the respondent came over to complain that the suit land belonged to him. The matter was heard before the Village Land Council where the decision was in favour of the respondent herein that is when the appellant filed a complaint before the Ward Tribunal.

On his part to oppose this claim the respondent herein evidenced that the suit land belonged to his family and the same was subject matter of the suit between the appellant's father and him in 2001 before the Primary Court of Sepuka which matter was decided in his favour. The respondent actually claimed that the suit land is part of the 30 acres land that was adjudicated in the Sepuka Primary Court between him and the appellant's father.

The respondent herein lost the suit before the Ward Tribunal but on appeal before the District Land and Housing Tribunal of Singida the decision was in his favour.

Having been aggrieved by that decision the appellant herein filed this appeal upon the following four grounds of appeal;

- 1. That, the trial Tribunal Chairman (sic) erred in law and fact to hold as he did that the case filed by the appellant herein at Ward Tribunal of Sepuka (sic) is res judicata without conducting a locus in quo to ascertain whether the land in dispute is within 30 acres which had a case at Sepuka Primary Court Civil Case No. 109/2001.*
- 2. That, the trial Chairman (sic) erred in law and in facts in not regarding that appellant herein who succeeded the land in dispute from his father Salum Kibwana are*

*(sic) in that land since 1954 to date while the alleged Primary Case (sic) filed on 2001.*

*3. That, the trial Chairman (sic) erred by not considering the time and development of the suit land done by appellant herein since 1954 to date including planting trees and erecting 3 roomed house which is still on construction process.*

*4. That, the trial Chairman (sic) erred in not considering if respondent and his father won the case at Sepuka Primary Court since 2001 what caused them not to use and occupy the same since then to date if at all the suit land is the same/not different.*

I should state before going further that the appellant while he filed appeal against the appellate district tribunal but in his grounds of appeal he has been referring to the trial tribunal Chairman. However, this court finds that the omission is not fatal as the appellant stated at the start that he was aggrieved by the decision of the appellate tribunal.

This appeal was duly heard where essentially the appellant reiterated his grounds of appeal and the respondent maintained that the appellant's father and his father (respondent's father) adjudicated over same suit land in 2001 and he is now legal representative of his deceased father. That the appellant has never planted permanent trees in the suit land.

Following parties contending submissions this court is required to decide whether this appeal has merit.

Starting by the first ground of appeal this court agrees with the appellant that since there has been from inception a claim that the suit land is part of 30 acres land that was subject matter of a suit between the respondent and appellant's father that ought to be a visit of the *locus in quo* during the trial. However, the trial tribunal indicated that it could visit the *locus in quo* on 13/11/2015 but there is no such proceedings in the court record. It means no any visit was done.

This court is of the considered view that by the dictates of the facts of the case the visit of the *locus in quo* was important for meaningful decision of this case and more so as the appellant did not even mention the size of the land that he is claiming.

Consequently, the remedy to the foregoing is for this case to be retried so that the visit of the *locus in quo* could be done for justifiable decision where proceedings of the same would be documented.

Further, the appellant's name JUMA SALIMU MPUNDA which appears in the Ward Tribunal's record should be maintained since before the district tribunal and this court that name reads JUMA SALIMU KIBWANA.

For the foregoing and by this court's revision powers envisaged under section 43 (1) (b) of the Land Disputes Courts Act [CAP 216 R.E. 2002] the Ward Tribunal's proceedings are hereby nullified and quashed. Likewise, the proceedings in the district tribunal which now lacks leg to stand are quashed and all orders thereto set aside.

In fine, this appeal succeeds with an order for retrial of the case before the Ward Tribunal. Each party to bear their own costs here an below as the omission was not their fault.

It is ordered accordingly.



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**M.A. KWARIKO**

**JUDGE**

**31/7/2017**

**DATED at DODOMA this 31<sup>st</sup> day of July, 2017**



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**M.A. KWARIKO**

**JUDGE**

**31/7/2017**

**Date : 31/07/2017**

**Coram : Hon. M.A. Kwariko, J.**

**Appellant: Present**

**Respondent - Present**

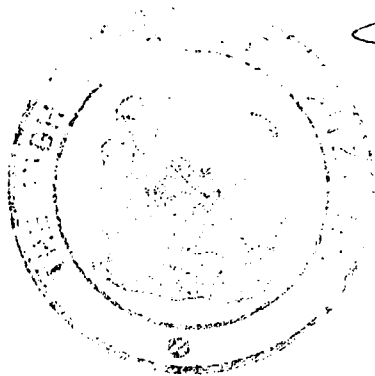
**C/c : Judith**

**Appellant**

I am ready for judgment.

**Respondent:** I am also ready.

**Court:** Judgment delivered in court today in the presence of both parties and Ms. Judith Court Clerk.



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**M.A. KWARIKO**

**JUDGE**

**31/7/2017**

**Court:** Right of Appeal Explained.



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**M.A. KWARIKO**

**JUDGE**

**31/7/2017**