

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

AT KIGOMA

MISC. LAND CASE APPEAL NO. 2 OF 2019

*(Arising from land appeal No. 115/2014 DLHT Kigoma and Original land
Dispute No. 11/2013 of Bugaga Ward Tribunal)*

MATIAS S/O LUHANA APPELLANT

VERSUS

MUPIZI MPUZU RESPONDENT

JUDGMENT

Date of Last Order: 28/5/2020

Date of Judgment: 15/6/2020

Before: Hon. A. Matuma, J

The appellant Matiasi Luhana unsuccessfully sued the respondent Mupizi Mpuzu in the Ward Tribunal for Bugaga Ward Claiming ownership of the dispute shamba. He thus appealed to the District Land and Housing Tribunal of Kigoma but again he was unsuccessful.

This is a second appeal by the appellant with 4 grounds of appeal.

The summary facts are that the appellant alleged to have acquired the dispute shamba in 1975 by being allocated the same by two village councils namely Nyumbigwa village and Nkundutsi village. The respondent on his party stated that he acquired such shamba by clearing the bush longtime ago in 1975 and had been in possession and development of it uninterrupted until in 1995 when the appellant was seen going around and later in 2014 instituted this case against him in the Ward Tribunal. The Trial Tribunal found that the appellant was not credible in

his evidence as there was no village government in 1975 which allocated land to villagers and also had failed to show the dispute shamba at the time the tribunal members visited the locus in quo. It thus adjudged for the respondent. The appellant unsuccessfully appealed to the District Land and Housing Tribunal.

At the hearing of this appeal the appellant appeared in person and had some explanations for his appeal sometime out of his grounds of appeal. He argued that he was allocated the dispute shamba in 1974 and possessed it for long time and that the respondent and his fellows came from a different division (Tarafa ya Kasulu) to dispossess him the land in Tarafa ya Bugaga. He thus lamented that the two lower tribunals unjustifiably denied him his rights because the respondent has some money and has always disobeyed to the court for not even attending when summoned. He also attacked the sketch map of the trial tribunal in that the same was drawn by the secretary of the Ward tribunal for the purpose of dispossessing him; ***"ni ya wizi hii"***.

The respondent defaulted appearance despite the fact that he was duly served, I thus decided to proceed with this appeal *ex parte*.

The Appellant in his first ground of appeal alleges that, the District Land and Housing Tribunal erred in law by not holding that the trial Ward tribunal was wrongly constituted as it consisted two women. The appellant did not however elaborate this ground at the hearing.

It is my firm finding that this first ground of appeal is an afterthought because it was not raised in the 1st appellate Court. The 1st appellate tribunal did not thus determine the ground or complaint about the composition of the trial Ward Tribunal.

In the case of ***Kigoma/Ujiji Municipal Council versus Kigoma Cinema***, land Appeal No. 14 of 2017 (HC) at Tabora I had time to deal with a similar problem and I held:-

*"I am of the view that the appellant brought this ground as an afterthought after having lost the battle in the trial tribunal and I am not prepared to act on afterthoughts, as it was rejected in the case of **East African Development Bank versus Blue line Enterprises Tanzania Limited**, Civil Application No. 47/210 (CAT)".*

I hold the same view in the instant appeal and further hold that, it is quite unfair for the appellant to blame the District Land and Housing Tribunal for not deciding on the matter he did not personally raise.

Not only that he ought to have raised it at the trial tribunal to accord the respondent opportunity to respond.

Even if I had to consider the ground on merit the same is bound to fail because section 11 of the Land Disputes Court Act, Cap. 216 R.E 2002 provides that the composition of Ward Tribunals shall be not less of four nor more than eight members of whom three shall be women.

According to the records of the Tribunal the matter was heard and determined by eight members who are the maximum number as provided under the law (supra). Those members who determined the dispute are; Michael Kayanda (chairman), Bonifasi Bulongo (Secretary), Leonida Muyela (Member), Yusta Jumanne (Member), Mariamu Piusi (Member), Samweli Mkonodi (Member), Silvanus Mtaileleba (Member) and Michael Sakejo (Member).

Although names might not truly reflect the sex but customarily, we have names of women and men. Out of the eight members herein above the names of three of them are customarily used by women and thus they connote that they are women. These are Leonida, Yusta and Mariamu.

Since the appellant did not raise objection on the composition of the trial tribunal nor raised it at the first appeal, and has even refrained to argue on it at the hearing of this appeal, he is estopped under section 123 of the Evidence Act to deny that the tribunal was properly composed. I therefore reject the first ground of appeal and dismiss it.

In the second ground of appeal, the appellant tries to impeach the trial Court's record that it wrongly recorded him to have acquired the dispute shamba in 1975 instead of 1974 and therefore he was in a long possession until 2014 when the dispute arose. At the hearing of this appeal he also stated that he was given the dispute shamba in 1974.

I am of the view that this ground should fail because, Court proceedings are not easily impeached. The appellant has not filed an affidavit to the effect that what transpired in the trial tribunal is not what is exactly reflected on record. He is therefore blasting the trial tribunal's records without oath or affirmation. It is practically not allowed unless the due process is followed in impeaching the court's records including swearing or affirming an affidavit to that effect.

At the trial tribunal, the appellant was recorded to have been stated that he was allocated the disputed shamba in 1975. The trial tribunal in its decision held that in 1975 there was no allocation of shambas to the villagers by their villages ***"Ushahidi uliotolewa ni Ushahidi wa uongo***

kwani hakuna serikali iliyokwenda kugawa mashamba mwaka 1975".

The appellant is now purporting to say that he did not tell the trial tribunal that it was 1975 but that he told them it was in 1974. There is no reason or reasons advanced by the appellant as to why should the trial tribunal had decided deliberately to modify and fabricate his evidence.

Furthermore, the issue of long possession of the dispute shamba by the appellant is answered in the negative because when the tribunal members visited the locus in quo he failed to positively point out or show the dispute shamba. He was not certain with the real dispute shamba and that necessitated him to repeat several times showing here or there while telling them "**samahani nimekosea**".

To the contrary, the trial Tribunal found the evidence of the respondent worth of belief and it is him who was found to have been in long possession of the dispute shamba:-

"Baraza lilibaini kuwa maelezo ya mdaiwa siyo ya kutilia mashaka kwani alitembeza wajumbe kwa umakini zaidi na kuonyesha mpaka wake bila hofu na kutaja waliopakana naye pia hakuonyesha eneo moja zaidi ya mara moja kama mdai Matiasi Luhana aliyeonyesha eneo lake kwa mashaka".

The trial Tribunal also found that there were inconsistencies in evidence between the appellant and his witness who was alleged to have participated in the allocation of the dispute shamba to the appellant. While his witness stated that they allocated to him only 4 acres, the appellant stated that they allocated to him 12 acres. Not only that but also the appellant's witness one Mwarabu Tungilayo, the boundaries he explained

were not traced during the physical visit to the locus in quo. I therefore dismiss the second ground of appeal.

In the 3rd ground, the appellant laments that the District Land and Housing Tribunal erred to hold that the respondent occupied and used the dispute land from 2002 to 2014 when the dispute arose.

With due respect to the appellant, I have not seen anywhere in the judgment of the District Land and Housing Tribunal stating that the respondent had been in possession of the dispute shamba from 2002 to 2014. It merely upheld the decision of the trial tribunal after it had re-evaluated the evidence on record and visited the locus in quo. This ground is therefore a creation of matters not featuring in the records of the Court. I accordingly dismiss it.

The last ground of appeal is that the District Land and Housing Tribunal erred on point of law and fact by failing to hold that the sketch map was wrongly drawn.

This ground has no substantive value because the decision of both the trial tribunal and that of the District Land and Housing Tribunal did not base on the sketch map. The sketch map was not evidence of either party but it was drawn by the trial tribunal just to reflect the dispute shamba and the nearby shambas with physical features in the locality. The sketch map was thus not evidence of either party relied in the decision.

Even though, at the first appeal to the District Land and Housing Tribunal the appellant presented a ground relying on the sketch map as a good sketch plan in his favour;-

"Kwamba:- Ramani iliyochorwa inaonyesha kuwa mzee Mupizi (Mujibu Rufaa) alijiongeza eneo kwa kumega eneo la mwomba rufaa".

He did not therefore complain against it but relied on it, at this stage therefore it is nothing but an afterthought. I accordingly dismiss this ground too.

In the premises, the whole appeal is dismissed in its entirety with costs.

Right of further appeal is fully explained subject to the relevant laws governing third appeals on matters originating from Ward Tribunals.




A. Matuma

Judge

15/6/2020