

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISCELLANEOUS LAND APPEAL NO 26 OF 2020

ABDALAH ATHUMANI APPELLANT

VERSUS

MUSA MASENZA RESPONDENT

(Arising from Land Appeal No. 25/2019 before the District Land and Housing Tribunal. Original Land Application No. 02/2018 before the Ward Tribunal of Ketare.)

JUDGMENT

6th & 17th July, 2020

Kahyoza, J.

Abdallah Athuman's father sold a parcel of land measuring 10 acres to **Musa Masenga**. The seller and buyer executed a deed of sale which was witnessed by the deceased's wives. One of terms of sale agreement read that;

"Kwamba Muuzaji ni mmiliki halali wa ardhi inayouzwa ambayo ipo katika Kijiji cha MARAMBEKI Kitongoji cha CHAKUNDI, yenye ukubwa wa ekari kumi (10) na ambayo imetambuliwa na kuoneshwa kwa mmunuzi na mipaka yake yote mbele ya mashahidi waliotajwa na kuwekwa sahihi zao katika hati hii kama inavyooneshwa hapo chini."

Abdalah Athumani sued **Musa Masenza** claiming that the latter encroached to his land. Abdalah Athumani told the ward tribunal that his father gave him a parcel of land adjacent to the land sold to

Musa Masenza. Musa Masenza contended that Abdalah Athumani's father sold him 10 acres including the land alleged belonging to Abdalah Athumani.

The ward tribunal found for Abdalah Athumani that declaring that Musa has a right to own 10 acres he purchased from Abdalah Athumani's father. It declared that the remaining land of 6.92 acres is the property of Abdalah Athumani. It went ahead and demarcated the land.

Aggrieved, Musa Masenza appealed to the District Land and Housing Tribunal (the **DLHT**). The **DLHT** upheld the decision of the ward tribunal. It decided that the respondent is entitled to own **ten acres**, he bought and that the said land be determined using metric measurement system. It decided

"I also order that, using metric measurements, the said ten acres be handed over to the appellant, Musa Masenza and he shall continue occupying the same, unless ordered otherwise by a court of competent jurisdiction."

Abdalah Athumani was dissatisfied and appeared to this Court, raising four grounds of complaint, which I paraphrase as follows-

1. That, the appeal tribunal erred in law and fact for failure to take into account that the Appellant owns the piece of land encroached by the respondent, which were not occupied by the Appellant's father.

2. That, the appeal tribunal erred in law and fact for considering the fact of *locus standi* without analysing the evidence.
3. That, the appeal tribunal erred in law and fact for failure to state in his judgment the boundary of the said 10 acres bought by the respondent.
4. That, the trial tribunal erred in law and a fact for disregarding the proceedings of the trial tribunal and the appellant's evidence.

This is a second appeal. It as a settled principle of law that a second appellate court can interfere with the finding of facts of the trial court where it is satisfied that the trial court has misapprehended the evidence in such a manner as to make it clear that its conclusions are based on incorrect premises. See the case of **Salumubungu V. Mariamu Kibwana Civil Appeal No. 29/1992.**

What is the coverage of the land Musa Masenza purchased?

According to the evidence of records and as shown above, there is no dispute that Musa Masenza, the respondent bought 10 acres of land from Abdalah Athumani's father. Abdalah Athmani's position is that his father land was more than 10 acres and that he only sold 10 acres and gave the remaining land to him (Abdalah Athumani). He contended that his father gave him the land before he met his demise. On the other

hand, Musa admits that he bought 10 acres from Abdalah Athmani's father. And that the 10 acres comprised the whole land that belonged to Abdalah Athmani's father. The issue is whether the 10 acres of land Musa bought, covered whole land owned by Abdalah Athmani's father.

There is no dispute that both tribunals found that Mussa bought 10 acres of land and no more. The ward tribunal demarcated 10 acres, which it confirmed that it belonged to Musa and the rest of land measuring 6.92 acres bestowed it to Abdalah Athumani. The Appellate tribunal contended that Musa, the respondent bought 10 acres and that the same should be determined using "**metric measurement system**". I have no ground to defer from findings of the two tribunals. I concur with the findings of the two tribunals that Musa, the respondent bought 10 acres, if Abdalah Athumani's father want to sell the whole land; he would not have bothered to state in the contract that he sold 10 acres. He would have said that he was selling his land located at that given area and describe its boundaries.

Abdalah Athumani's father intended to sell 10 acres. I find it fair that 10 acres be determined by using **metric measurement system** and not by calculating steps. It is the 10 acres so determined that should be owned by Musa Masenza as per the contract. The remaining piece of land shall be owned by Abdalah Athumani.

Did Abdalah Athmani have *locus standi*?

I considered the issue whether the Abdalah Athmani had *locus standi* to sue Musa Masenza and concluded he had it. Abdalah

Athumani deposed that his father gave him the land in dispute before his death. He, therefore sued as the owner of the land and not otherwise. For that reason, I quash the finding of the **DLHT** that Abdalah Athmani had no *locus standi* to sue the respondent.

In the upshot, I find Abdalah Athmani, the appellant entitled to the parcel of land after measuring 10 acres of land, which Musa Masenza, the respondent bought from Abdalah Athmani's father. I order that land be surveyed and demarcated at the parties' costs, which shall be shared equally. Each party shall bear its costs for this appeal.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

17/7/2020

Court: Judgment delivered in the presence of the parties. Ms. Tenga present.



J. R. Kahyoza

JUDGE

17/7/2020