

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT KIGOMA

MISC. LAND CASE APPEAL NO. 1 OF 2019

(Arising from land appeal No. 116/2014 DLHT Kigoma and Original land Dispute No. 13/2014 of Bugaga Ward Tribunal)

MATIAS S/O LUHANA APPELLANT

VERSUS

JERADI HARUNA RESPONDENT

JUDGMENT

Date: 27th February, 2020

Before: Hon. A. K. Matuma, J

The Appellant Matiasi Luhana had sued the respondent Jeradi Haruna in the Ward Tribunal of Bugaga for recovery of possession over a dispute shamba. He lost the suit and unsuccessfully appealed to the District Land and Housing Tribunal.

This is a second appeal coached under three grounds of appeal namely;

- i. That the 1st Appellate District land Tribunal grossly erred on point of law and facts in failing to hold and appreciate that the Appellant had acquired good title over the disputed land upon the "**Principle of long possession**" having occupied the disputed parcel of land from the year 1974 when the same was allocated to him to the year 2014 when the dispute arose without being disturbed.*
- ii. That the 1st Appellate District Tribunal erred on point of law in occasioning an error on the face of record that the Respondent*

occupied and used the disputed parcel of land from the year 2002 to 2014 and such other facts to be raised.

- iii. *That the 1st Appellate District Land Tribunal grossly erred on point of law in failing to hold that Appellant proved his claim to the standard required in land cases.*

At the hearing of this appeal only appellant appeared and the respondent defaulted appearance without any notice despite the fact that he was duly served and in several occasions has attended in Court.

I thus ordered the appeal to proceed *ex parte* against the respondent. In his first ground of appeal the appellant submitted that he has been in long possession of the dispute shamba since 1974 when he was allocated by the village government and that in 2002 the respondent encroached into his shamba and picked $\frac{1}{4}$ of the acre which is actually in dispute.

He further submitted that in 2002 when the respondent trespassed into his shamba he sued him in the village government and the respondent stopped the trespass until in 2014 when he re – trespassed and it is when he decided to commence the suit in the trial tribunal.

In the second ground, he argued that the District Land and Housing tribunal erred to find the respondent had been in use of the shamba since 2002 while there is evidence that he had stopped until 2014 when he exactly encroached the dispute shamba.

He finally submitted in the last ground that he proved his claims but denied his rights by both tribunal below.

I will consider the two grounds together. In the judgment of the trial tribunal, it was observed that when the tribunal visited the locus in quo, the

appellant had shown different shambas which were in possession of some people other than the respondent;

"Tarehe 15/8/2014 Baraza lilifika kuona eneo la mgogoro huo na kubaini yafuatayo;

- i. Mdai hakupaswa kumshtaki Jeradi Haruna kwani mashamba aliyoonyesha Mdai yaliyolimwa siyo mashamba ya Jeradi Haruna.*
- ii. Mdai Matiasi alishindwa kuonyesha eneo la migogoro kikamilifu".*

Then the trial tribunal remarked at the end;

"Hivyo Mdai Matiasi Luhama asiendeele kumsumbua au kumshtaki Jeradi Haruna kwani maeneo aliyoonyesha Mdai yaliyolimwa hayakulimwa na Jeradi Haruna. Ni watu tofauti na Jeradi Haruna".

That being the case, it is apparent on record that the appellant was not certain with the dispute shamba. He could not positively point it to the members of the trial tribunal when it visited the locus in quo.

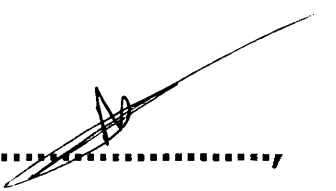
In the circumstances be it that the appellant has been in along possession of the dispute shamba, or that Jeradi Haruna had trespassed therein in 2002 and then stopped, I am of the view that at the time the appellant instituted his claims he assumed that his trespasser in 2002 is the one who has again trespassed in 2014. This is because the trial tribunal required him (the appellant) to lead them to the dispute shamba and upon reaching there, the tribunal found that such area is neither owned nor it was in possession of the respondent but some other third parties.

In the circumstances, I am inclined to agree with the decision of the District Land and Housing tribunal which confirmed the decision of the trial tribunal as by allowing this appeal might lead to chaos in the cause of execution since it is clear that the people who are in possession of the dispute shamba were

not sued and might be forced to vacate without having been heard. The appellant should go back and sue the actual trespassers. I therefore dismiss this appeal for having been brought without sufficient cause.

No orders as to costs. It is so ordered.




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A. Matuma,

Judge,

27th February, 2020